

EXHIBIT 1

PLAINTIFF LOKIA HOLDINGS, LLC'S MOTION FOR SUMMARY JUDGMENT ON COUNTS I, II, III AND VI OF THE COMPLAINT [Docket #34]

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LOKAI HOLDINGS, LLC, a Delaware Corporation,

CASE NO: 3:16-CV-00283-RCJ-VPC

Plaintiff.

VS.

ABSOLUTE MARKETING, CRAIG HUEFFNER
and DOES 1-10,

**PLAINTIFF LOKAI HOLDINGS, LLC'S
MOTION FOR SUMMARY
JUDGMENT ON COUNTS I, II, III AND
VI OF THE COMPLAINT**

Defendant.

ORAL ARGUMENT REQUESTED

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1 Plaintiff LOKAI HOLDINGS, LLC (“Plaintiff” or “Lokai”) moves this Court for an order
 2 granting summary judgment in favor of Plaintiff as to the first, second, third, and sixth causes of
 3 action contained in Plaintiff’s Complaint. This Motion is made pursuant to Fed. R. Civ. P. 56 and
 4 Local Rule 56-1 on the grounds that based on the undisputed material facts, Plaintiff has
 5 established its claims as a matter of law. This Motion is based on the following memorandum, the
 6 attached affidavits and exhibits, the pleadings and papers on file herein, any oral argument held on
 7 this matter, and any other evidence the Court may wish to consider.

8 **I. INTRODUCTORY STATEMENT**

9 Defendant Craig Hueffner (“Defendant”)¹ has admitted to distributing and/or selling
 10 bracelets which bear, embody or otherwise use trademarked and copyrighted content of Lokai, and
 11 further, using advertising material bearing, embodying or otherwise using the trademarks in
 12 conjunction with the sale of such bracelets, all without permission. Defendant has further
 13 admitted to doing so after being contacted by counsel for Lokai. Defendant’s actions forced Lokai
 14 to initiate this lawsuit and engage private investigators to obtain photographic and physical
 15 evidence of his infringement. Defendant then destroyed relevant evidence after service of the
 16 Complaint, and instructed the Court that he is “judgment-proof.” Accordingly, Lokai is entitled to
 17 summary judgment on the issues of counterfeiting, trademark infringement, false designation of
 18 origin, false description of fact and false representation of fact, copyright infringement, and
 19 statutory damages and attorney’s fees stemming from the same. Defendant’s actions show a
 20 willful disregard for intellectual property rights and laws, and should be treated as such.

21 For the reasons set forth fully below, Lokai respectfully asks that this Court grant the
 22 Motion in its entirety and enter summary judgment on the issues herein.

23 **II. FACTUAL BACKGROUND**

24 **[CONCISE STATEMENT OF FACTS PURSUANT TO L.R. 56.1]**

25 Lokai is a Delaware corporation with headquarters located in New York City and is
 26 engaged primarily in the manufacture and sale of inspirational beaded bracelets (“Lokai

27
 28 ¹ Defendant Hueffner has represented to this Court that Defendant Absolute Marketing is
 Defendant’s Hueffner’s “dba.” As such, Hueffner’s admissions apply equally to Defendant
 Absolute Marketing.

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1 Bracelets"). See Declaration of Camilo Lopez ("Lopez Decl.") at ¶ 3. Lokai Bracelets are
 2 available, or have been available, in various colors and bear, embody or otherwise use, on the
 3 bracelet and/or attached tag, and in connected promotional and advertising material, the following
 4 federally registered trademarks: (1) the standard character "lohai" trademark (Reg. Nos. 4,429,129
 5 and 4,637,357), (2) the stylized "lohai" trademark (Reg. Nos. 4,640,686 and 4,742,254), (3) the
 6 stylized water droplet logo (Reg. Nos. 4,636,915 and 4,698,780) and (4) the standard character
 7 "find your balance" trademark (Reg. No. 4,870,494) (individually and collectively the
 8 "Trademark(s)"). Lopez Decl. at ¶ 4; See also Exhibit A attached to the Affidavit of Brent M.
 9 Davis ("Davis Aff.") as at 1-7. The tag attached to the clear-colored Lokai Bracelet (the "Lokai
 10 Bracelet Hangtag") is registered with the US Copyright Office under VA 1-968-047, with an
 11 effective date of registration of November 03, 2014 (the "Copyright"). See Exhibit B attached to
 12 the Davis Aff. as at 1-3. In addition, images of authentic clear-colored and purple-colored Lokai
 13 Bracelets with attached Lokai Bracelet Hangtags are attached to the Lopez Decl. as Exhibit C at
 14 pgs. 1-8.

15 Defendant Craig Hueffner ("Defendant" or "Hueffner") sells various products at trade
 16 shows throughout the United States over the last twenty-five (25) years. Deposition of Hueffner
 17 ("Hueffner Dep."), a copy of which relevant portions are attached to the Davis Aff. as Exhibit D at
 18 43:16-22; 95:22-24; 99:7. Defendant typically exhibits at such trade shows under the name
 19 Absolute Marketing, a fictitious entity registered with the State of Florida in 2014. Hueffner Dep.
 20 at 12:18-13:1; See also Exhibit E attached to the Davis Aff. at pgs. 1-2; See also Exhibit F
 21 attached to the Davis Aff. at pgs. 1-9. Defendant uses, and has been using, the email address
 22 "craig_hueffner@msn.com" ("Defendant's MSN.com Email Address"). Hueffner Dep. at 15:11-
 23 17. Defendant has admitted to (1) distributing and/or selling bracelets which bear, embody or
 24 otherwise use the Trademarks and Copyright (the "Counterfeit Bracelets") (Hueffner Dep. at 8:3-8,
 25 25-9:5; 17:1-4; 54:13-16; 61:11-13, 22-62:6; 64:18-20, 23-65:2; 74:22-24; 118:8-9; See also
 26 Defendant's discovery responses attached, as they were produced, to the Davis Aff. as Exhibit G at
 27 pg. 1), as well as (2) using advertising material bearing, embodying or otherwise using the
 28 Trademarks in conjunction with the sale of the Counterfeit Bracelets ("Infringing Advertising

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1 Material") (Hueffner Dep. at 12:4-6; 17:21-18:2, 11-16; 56:23-57:1; 61:16-18; 68:14-16; 79:11-
 2 19; 80:3-6; 114:20-22), acknowledging that he did not have permission from Lokai to use "Lokai,"
 3 "find your balance," the stylized "Lokai" mark, or the stylized water droplet logo (Hueffner Dep.
 4 at 60:12-15; 62:12-21).

5 Plaintiffs, and/or their legal representatives, were first notified of Defendant's sale of the
 6 Counterfeit Bracelets and use of Infringing Advertising Material on or about August 11, 2015.
 7 Affidavit of Shane I. Birnbaum ("Birnbaum Aff.") at ¶ 3. On or about August 11, 2015,
 8 representatives of Plaintiff sent a cease and desist letter via first class mail and email to
 9 Defendant's MSN.com Email Address, a copy of which is attached to the Birnbaum Aff. as
 10 Exhibit H at pgs. 1-10. See also Birnbaum Aff. at ¶ 4. On or about August 18, 2015,
 11 representatives of Plaintiff sent another cease and desist letter via first class mail and email to
 12 Defendant's MSN.com Email Address and the address for Absolute Marketing as registered with
 13 the State of Florida, a copy of which is attached to the Birnbaum Aff. as Exhibit H at pgs. 11-20.
 14 See also Birnbaum Aff. at ¶ 5; See also Exhibit E at pgs. 1-2. Plaintiff or its representatives did
 15 not receive a response from Defendant to either cease and desist correspondence. Birnbaum Aff.
 16 at ¶ 6.

17 Plaintiffs, and/or their legal representatives, were again notified of Defendant's sale of the
 18 Counterfeit Bracelets and use of Infringing Advertising Material on or about April 4, 2016.
 19 Birnbaum Aff. at ¶ 7. On or about April 4, 2016, Plaintiff's representatives contacted Defendant
 20 via telephone and notified Defendant of his infringing activities and prior cease and desist
 21 correspondence. Birnbaum Aff. at ¶ 8. On or about April 4 and 5 of 2016, representatives of
 22 Plaintiff exchanged email correspondence with Defendant in an attempt to resolve the matter,
 23 however, Defendant refused to comply with the requests and instructed representatives of Plaintiff
 24 to not contact him again. See Birnbaum Aff. at ¶ 9; See also a copy of the email correspondence
 25 attached to the Birnbaum Aff. as Exhibit I at pgs. 1-3. Defendant continued to sell the Counterfeit
 26 Bracelet and use the Infringing Advertising Material after the April 4 and 5, 2016 email exchange.
 27 Hueffner Dep. at 54:13-16; 60:6-10.

28 Plaintiffs were once more notified of an individual's sale of the Counterfeit Bracelets and

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1 use of Infringing Advertising Material at a trade show in Reno, NV on or about May 23, 2016,
 2 which through Plaintiff's representative's investigation was later identified as Defendant. See
 3 relevant correspondence attached to the Birnbaum Aff. as Exhibit J at pg. 1; See also Birnbaum
 4 Aff. at ¶ 11. On or about May 26, 2016, understanding further cease and desist attempts would be
 5 futile, Plaintiff initiated this lawsuit and engaged Martin-Ross & Associates to serve the summons
 6 and Complaint on the Defendant at the trade show and document evidence of his sale of the
 7 Counterfeit Bracelets and use of Infringing Advertising Material. See Complaint; See also ECF
 8 No. 10; See also Affidavit of Shannon S. Pierce ("Pierce Aff.") at ¶ 3; See also Declaration of
 9 Michael LaFrieda ("LaFrieda Decl.") at ¶ 3. On or about May 27, 2016, Plaintiff's representatives
 10 from Martin-Ross & Associates obtained images of Defendant setting up a booth at the trade show
 11 in Reno, NV displaying the Counterfeit Bracelets and Infringing Advertising Material. See an
 12 example of such images, along with transcribed notes relating to the same, attached to the
 13 LaFrieda Decl. as Exhibit K at pgs. 1-4; See also Hueffner Dep. at 68:14-21; 73:12-15. Plaintiff's
 14 representatives from Martin-Ross & Associates also obtained two (2) Counterfeit Bracelets from
 15 Defendant, one (1) clear-colored and one (1) purple-colored. See images of such bracelets
 16 attached to the Birnbaum Aff. as Exhibit L at pgs. 2-6; See also Exhibit K at pg. 1; See also
 17 LaFrieda Decl. at ¶¶ 5-7; See also Pierce Aff. at ¶¶ 4-6.

18 Defendant has been unable to recall or provide evidence of the sale of the Counterfeit
 19 Bracelets and use of Infringing Advertising Material, including sales information, because he does
 20 not maintain any business records or receipts, and further, destroyed all relevant evidence he had in
 21 his possession after service of the Complaint by disposing of it in the garbage, including the
 22 Counterfeit Bracelets and Infringing Advertising Material. See Hueffner Dep. at 8:25-9:5, 13-11:1;
 23 11:14-16; 12:4-11; 17:21-24; 31:12-33:19; 37:16-22; 65:18-21; 66:2-3; 67:11-14; 99:3-4; 124:19-
 24 126:2; See also Exhibit G at pgs. 1-4, 6-8.

25 **III. STANDARD OF LAW**

26 Summary judgment is appropriate where the pleadings, depositions, answers to
 27 interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no
 28 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

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1 Fed. R. Civ. P. 56(a). A party seeking summary judgment bears the initial burden of informing the
 2 court of the basis for its motion and of identifying those portions of the pleadings and discovery
 3 responses that demonstrate the absence of a genuine issue of material fact. See Celotex Corp. v.
 4 Catrett, 477 U.S. 317, 323 (1986). Once the moving party meets its burden, the burden shifts to
 5 the nonmoving party opposing the motion, who must “set forth specific facts showing that there is
 6 a genuine issue for trial.” See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986).
 7 Summary judgment is warranted if a party “fails to make a showing sufficient to establish the
 8 existence of an element essential to that party’s case, and on which that party will bear the burden
 9 of proof at trial.” Celotex, 477 U.S. at 322. A genuine issue exists if “the evidence is such that a
 10 reasonable jury could return a verdict for the nonmoving party,” and material facts are those “that
 11 might affect the outcome of the suit under the governing law.” Anderson, 477 U.S. at 248. There
 12 is no genuine issue of fact “[w]here the record taken as a whole could not lead a rational trier of
 13 fact to find for the nonmoving party.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S.
 14 574, 587 (1986). It is not the court’s task “to scour the record in search of a genuine issue of
 15 triable fact.” Keenan v. Allan, 91 F.3d 1275, 1278 (9th Cir.1996). Counsel has an obligation to
 16 lay out their support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d 1026, 1031 (9th Cir.
 17 2001). The court “need not examine the entire file for evidence establishing a genuine issue of
 18 fact, where the evidence is not set forth in the opposition papers with adequate references so that it
 19 could conveniently be found.” Id. “A party moving for summary judgment is entitled to the
 20 benefit of any relevant presumptions that support the motion.” Coca-Cola Co. v. Overland, Inc.,
 21 692 F.2d 1250, 1254 (9th Cir. 1982) (internal citations omitted)

22 **IV. ARGUMENT**23 **A. There is no genuine dispute of material fact that Defendant’s actions constitute**
 24 **trademark counterfeiting as a matter of law**

25 “A plaintiff asserting a claim of trademark counterfeiting in violation of 15 U.S.C. § 1114
 26 must show (1) ownership of a valid trademark and (2) counterfeiting of that trademark.” Gucci
 27 Am., Inc. v. Pieta, 2006 U.S. Dist. LEXIS 96701, at *9 (C.D. Cal. 2006) citing H-D Michigan v.
 28 Bikers Dream, 48 U.S.P.Q. 2d 1108, 1111 (C.D. Cal. 1998) (citing Westinghouse Electric Corp. v.

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1 General Circuit Breaker & Electric Supply Inc., 106 F.3d 894, 899 (9th Cir. 1997)).

2 Lokai bears the burden of demonstrating that there is no genuine issue of material fact
 3 regarding its ownership of valid trademarks. “Federal registration of a trademark endows it with a
 4 strong presumption of validity.” Coca-Cola Co., 692 F.2d at 1254 (internal citations omitted).
 5 Lokai owns four (4) federal trademark registrations on the Principal Register for the Trademarks.
 6 See Exhibit A. Accordingly, there are no issues of material fact that the Trademarks are valid and
 7 owned by Lokai.

8 There are no issues of material fact that Defendant counterfeited the Trademarks. 15
 9 U.S.C. § 1127 provides, in part, that, “[a] ‘counterfeit’ is a spurious mark which is identical with,
 10 or substantially indistinguishable from, a registered mark.” Defendant has admitted, under oath,
 11 that he sold and/or distributed the Counterfeit Bracelets (Hueffner Dep. at 8:3-8, 25:9-5; 17:1-4;
 12 54:13-16; 61:11-13, 22-62:6; 64:18-20, 23-65:2; 74:22-24; 118:8-9; see also Defendant’s
 13 discovery responses attached, as they were produced, to the Davis Aff. as Exhibit G at pg. 1).
 14 Defendant further admitted, under oath, that he used the Infringing Advertising Material in
 15 conjunction with the sale of the Counterfeit Bracelets (Hueffner Dep. at 12:4-6; 17:21-18:2, 11-16;
 16 56:23-57:1; 61:16-18; 68:14-16; 79:11-19; 80:3-6; 114:20-22), without permission from Lokai to
 17 use the Trademarks. (Hueffner Dep. at 60:12-15; 62:12-21). Additionally, there is
 18 incontrovertible evidence of the counterfeiting: the Counterfeit Bracelets obtained from Defendant
 19 (see Exhibit L at pgs. 2-6; see also Exhibit K at pg. 1; see also LaFrieda Decl. at ¶¶ 5-7; see also
 20 Pierce Aff. at ¶¶ 4-6), and photograph evidence of Defendant using the Infringing Advertising
 21 Material (see Exhibit K at pg. 4; see also Hueffner Dep. at 68:14-21; 73:12-15).

22 Nevertheless, a careful inspection of the Counterfeit Bracelets, and comparison of the same
 23 to Lokai Bracelets, unequivocally establishes that Defendant has counterfeited the Trademarks.
 24 The Counterfeit Bracelets use marks (see Exhibit L at pgs. 2, 3, 5, 6), on the attached tag and the
 25 opposed black and white beads, that are “identical with, or substantially indistinguishable from”
 26 the Trademarks (See Exhibit A, pgs. 1, 3, 5, 7).

27 There are no genuine issues of material fact that the Counterfeit Bracelets are not authentic
 28 Lokai Bracelets. See Lopez Decl. at ¶ 6. Authentic Lokai Bracelet Hangtags, on the front side,

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1 use the “®” symbol next to the bottom right of the stylized “lokai” trademark, as well as to the
 2 bottom left of the stylized water droplet logo, while the clear-colored Counterfeit Bracelet
 3 hangtags do not use the “®” symbol next to the bottom right of the stylized “lokai” trademark or to
 4 the bottom left of the stylized water droplet logo. Lopez Decl. at ¶ 6a. Authentic purple-colored
 5 Lokai Bracelet hangtags, on the back side, use the phrase “Proud supporter of the Alzheimer’s
 6 Association®” (emphasis added) with the initial “A” in both “Alzheimer’s” and “Association”
 7 capitalized, while the initial “a” in both “alzheimer’s” and “association” (emphasis added) on the
 8 back side of the purple-colored Counterfeit bracelet hangtags are not capitalized. Lopez Decl. at ¶
 9 6b. Authentic Lokai Bracelet Hangtags and authentic purple-colored Lokai Bracelet hangtags, on
 10 the front side, use the phrase “find your balance” in bolded text, while this phrase is not bolded on
 11 the Counterfeit Bracelet hangtags. Lopez Decl. at ¶ 6c. Authentic Lokai Bracelets have a small
 12 indented circle on the back side of the diametrically opposed black and white beads; indented
 13 circle on the back side of the diametrically opposed black and white beads on the Counterfeit
 14 Bracelets is visibly larger in circumference. Lopez Decl. at ¶ 6d. Authentic Lokai Bracelets have
 15 identifiable separation between the colored beads adjacent to the diametrically opposed black and
 16 white beads so that a small section of black or white silicone is visible, while the colored beads
 17 adjacent to the diametrically opposed black and white beads on the Counterfeit Bracelet lack such
 18 separation. Lopez Decl. at ¶ 6e.

19 There are no material issues of fact that Lokai is the owner of valid Trademarks, and
 20 Defendant counterfeited such marks. Accordingly, Lokai is entitled to summary judgment on the
 21 issue of counterfeiting as a matter of law.

22 **B. There is no genuine dispute of material fact that Defendant’s actions constitute
 23 trademark infringement as a matter of law**

24 “To prevail on its trademark infringement claim, [Lokai] must show that: (1) it has a valid,
 25 protectable trademark, and (2) that [Defendant]’s use of the mark is likely to cause confusion.”
 26 Applied Info. Scis. Corp. v. eBay, Inc., 511 F.3d 966, 969 (9th Cir. 2007) (internal citation
 27 omitted).

28 As explained above in section IV, A of the Motion, Lokai has already demonstrated that

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1 there is no genuine issue of material fact regarding the ownership and validity of the Trademarks
 2 by producing the Certificates of Registration.

3 There are no genuine issues of material fact that Defendant's use of the mark is likely to
 4 cause confusion. Likelihood of confusion can be presumed where the marks are nearly identical
 5 and used on related products and services. See Brookfield Commc'ns, Inc. v. W. Coast Entm't
 6 Corp., 174 F.3d 1036, 1056 (9th Cir. 1999) ("In light of the virtual identity of marks, if they were
 7 used with identical products or services likelihood of confusion would follow as a matter of
 8 course."); See also Nissan Motor Co. v. Nissan Computer Corp., 378 F.3d 1002, 1019 (9th Cir.
 9 2004) (Affirming summary judgment of likely confusion where, *inter alia*, the marks were "legally
 10 identical" and "the goods or services [were] related as to auto-related advertising").

11 As explained above in section IV, A of the Motion, there are no genuine issues of material
 12 fact that Defendant used the Trademarks and that the Trademarks and the marks used on the
 13 Counterfeit Bracelets and Infringing Advertising Material are virtually and legally identical and
 14 used with identical products and/or services. Accordingly, there are no genuine issues of material
 15 fact that there is, as a matter of law, a likelihood of confusion, and Lokai is entitled to summary
 16 judgment on the issue of trademark infringement as a matter of law.

17 **C. There is no genuine dispute of material fact that Defendant's actions constitute
 18 copyright infringement as a matter of law**

19 "To prevail on a claim of copyright infringement, [Lokai] must demonstrate (1) ownership of a
 20 valid copyright and (2) copying of protected elements of the copyrighted work." Tiffany Design,
 21 Inc. v. Reno-Tahoe Specialty, Inc., 55 F. Supp. 2d 1113, 1117 (D. Nev. 1999) citing Entertainment
 22 Research Group, Inc. v. Genesis Creative Group, Inc., 122 F.3d 1211, 1217 (9th Cir. 1997).

23 There are no genuine issues of material fact that Lokai has ownership of a valid copyright.
 24 "[A] certificate of registration will raise the presumption of valid copyright ownership." Tiffany
 25 Design, Inc., 55 F. Supp. 2d at 1118 (D. Nev. 1999) (internal citations omitted).

26 Lokai has a Certificate of Registration for the Copyright. See Exhibit B at pgs. 1-3.
 27 Therefore, Lokai has demonstrated that there is no genuine issue of material fact that it owns a
 28 valid copyright.

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1 There are no genuine issues of material fact that Defendant copied the protected elements
 2 of the Copyright. This can be achieved either through evidence of direct copying or through a
 3 showing that Defendants had “access” to the Copyright and that the two works at issue are
 4 “substantially similar.” See Funky Films, Inc. v. Time Warner Entertainment Co., L.P., 462 F.3d
 5 1072, 1076 (9th Cir. 2006); See also Three Boys Music Corp. v. Bolton, 212 F.3d 477, 481 (9th
 6 Cir. 2000).

7 In rare cases, a plaintiff can prove copying even without proof of access “if he can show
 8 that the two works are not only substantially similar, but are so strikingly similar as to
 9 preclude the possibility of [**18] independent creation.” Meta-Film Assocs., Inc. v. MCA
 10 Inc., 586 F. Supp. 1346, 1355 (C.D. Cal. 1984) (citing 3 Nimmer on Copyright § 13.01[B] and
Ferguson v. Nat'l Broadcasting Co., Inc., 584 F.2d 111, 113 (5th Cir. 1978)). In such
 instances, access will be inferred from the “striking” similarities between the works. Id.

11 Gable v. NBC, 727 F. Supp. 2d 815, 823 (C.D. Cal. 2010).

12 This qualifies as one of those rare cases. As explained herein, the tags attached to the
 13 Counterfeit Bracelets are “so strikingly similar” to the Lokai Bracelet Hangtag that they are nearly
 14 identical. See Exhibit B at pgs. 2-3; See also Exhibit L at pgs. 2, 4. The Counterfeit Bracelet tags
 15 copy nearly every element of the Copyright in almost identical manner, orientation and form,
 16 “precluding all possibility of independent creation.” As such, access should be inferred from the
 17 identicity of the works.

18 There are no genuine issues of material fact that Lokai owns a valid Copyright and that
 19 Defendant copied, with the exception of minuscule differences that would not be noticeable except
 20 upon intense inspection, the entirety of the copyrighted Lokai Bracelet Hangtag. Accordingly,
 21 Lokai is entitled to summary judgment on the issue of copyright infringement as a matter of law.

22 **D. There is no genuine dispute of material fact that Plaintiff is entitled to statutory
 23 damages and any other relief the court deems just as a matter of law**

24 [A] plaintiff may elect to receive an award of statutory damages [between \$1,000 and
 25 \$200,000 per counterfeit mark per type of good] in trademark actions involving the use of a
 26 counterfeit mark. See 15 U.S.C. § 1117(c). The purpose of § 1117 is to take the incentive
 27 out of counterfeiting and strengthen the civil remedies against counterfeiters. See S.Rep.
No. 177, 104th Cong. (1995). In amending § 1117 to provide for recovery of statutory
 28 damages, Congress recognized that “a civil litigant may not be able to prove actual
 damages if a sophisticated, large-scale counterfeiter has hidden or destroyed information
 about his counterfeiting.” Id. It is often the case that counterfeiters’ records are

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1 "frequently non-existent, inadequate or deceptively kept in order to willfully deflate the
 2 level of counterfeiting activity actually engaged in, making proving actual damages in these
 3 cases extremely difficult if not impossible." [*18] Id.

4 Avnet, Inc. v. Avana Techs. Inc., 2014 U.S. Dist. LEXIS 177436 *17-18 (D. Nev. 2014).

5 District courts have wide discretion in determining statutory damages, subject only to the
 6 statutory minimum and maximum, and the Lanham Act does not provide guidelines to
 7 courts for determining an appropriate award.

8 In fashioning the award of statutory damages, courts in this district have examined a wide
 9 range of factors, including the defendant's financial situation, naïveté, failure to resolve the
 10 trademark violations through settlement, and the extent of the infringement.

11 Id. at *20-22 (internal citations omitted).

12 Lokai hereby elects to receive an award of statutory damages for Defendant's use of the
 13 counterfeit mark. Lokai is faced with the exact situation Congress recognized above. Lokai is
 14 unable to prove actual damages due to Defendant's inability to recall or provide practically any
 15 evidence of the sale of the Counterfeit Bracelets and use of Infringing Advertising Material,
 16 beyond a mere guess², because Defendant admittedly does not maintain any business records or
 17 receipts, and further, *purposefully destroyed all relevant evidence he had in his possession after*
 18 *service of the Complaint by disposing of it in the garbage, including the Counterfeit Bracelets and*
 19 *Infringing Advertising Material.* See Hueffner Dep. at 8:25-9:5, 13-11:1; 11:14-16; 12:4-11;
 20 17:21-24; 31:12-33:19; 37:16-22; 65:18-21; 66:2-3; 67:11-14; 99:3-4; 124:19-126:2; See also
 21 Exhibit G at pgs. 1-4, 6-8. Further, Lokai attempted to contact Defendant multiple times in hopes
 22 of reaching a resolution without court intervention, but Defendant refused to comply by either
 23 simply not responding or instructing Lokai to not contact him. See Exhibit H at pgs. 1-20; See
 24 also Exhibit I at pgs. 1-3. Also, Defendant is experienced as he has been selling products at trade-
 25 shows for over two decades. Hueffner Dep. at 43:16-22; 95:22-24; 99:7. The circumstances
 26 support an award of statutory damages towards the maximum end of the spectrum.

27 In addition to statutory damages under the Lanham Act, the Copyright Act provides that:

28 [t]he copyright owner may elect, at any time before final judgment is rendered, to recover,
 29 instead of actual damages and profits, an award of statutory damages for all infringements
 30 involved in the action, with respect to any one work, for which any one infringer is liable

² See Hueffner Dep. At 11:7-16.

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1 individually, ... in a sum of not less than \$ 750 or more than \$ 30,000 as the court considers
 2 just.

3 17 U.S.C. § 504.

4 “The court has wide discretion in determining the amount of statutory damages to be
 5 awarded, constrained only by the specified maxima and minima.” Harris v. Emus Records Corp.,
 6 734 F.2d 1329, 1335 (9th Cir. 1984) (internal citation omitted). Awards of statutory damages
 7 serve both compensatory and punitive purposes. L.A. News Serv. v. Reuters TV Int'l, Ltd., 149
 8 F.3d 987, 996 (9th Cir. 1998) (internal citations omitted).

9 Lokai hereby elects to recover an award of statutory damages on the copyright claim³,
 10 along with any other relief, in an amount the court deems just. Defendant’s actions have made it
 11 difficult, if not impossible, for the Court to determine an appropriate amount to serve the
 12 compensatory purposes of the statutory damages award because Lokai cannot prove actual
 13 damages and profits from infringement of the Copyright due to Defendant’s lack of record keeping
 14 and purposeful destruction of relevant evidence after service of the Complaint. On the other hand,
 15 an award toward the maximum end of the spectrum would serve the punitive purposes of statutory
 16 damages as it would punish Defendant’s copying in whole cloth of the Copyright and purposeful
 17 destruction of evidence after service of the Complaint. As such, an award of statutory damages
 18 near \$30,000 would effectively serve both the compensatory and punitive purposes of statutory
 19 damages.

20 **E. There is no genuine dispute of material fact that Plaintiff is entitled to attorney’s fees
 21 as a matter of law**

22 “Section 505 of the Copyright Act provides that a district court “may . . . award a
 23 reasonable attorney’s fee to the prevailing party.”” Kirtsaeng v. John Wiley & Sons, Inc., 136 S.
 24 Ct. 1979, 1983 (2016) citing to 17 U. S. C. §505. Citing to Fogerty v. Fantasy, Inc., 510 U.S. 517
 25 (1994), the Court in Kirtsaeng stresses the importance of one factor⁴ in the determination of

26 ³ “[T]here is no double recovery in awards of statutory damages under both [the Copyright Act
 27 and Lanham Act] because distinct injuries to different interests have been suffered by the
 28 Plaintiff.” Microsoft Corp. v. Evans, 2007 U.S. Dist. LEXIS 77088, at *26 (E.D. Cal. Oct. 16,
 2007).

⁴ The Court cites to Fogerty acknowledging the “nonexclusive factors” that should be used “to

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1 awarding attorney's fees – objective reasonableness. Kirtsaeng at 1986-88. However, the Court
 2 clarifies that "objective reasonableness can be only an important factor in assessing fee
 3 applications—not the controlling one[,]” putting forth other examples of considerations which may
 4 warrant an award of attorney's fees, such as a party's litigation misconduct or deterrence of
 5 repeated instances of infringement. Id. at 1988-89 (internal citations omitted). "Although
 6 objective reasonableness carries significant weight, courts must view all the circumstances of a
 7 case on their own terms, in light of the Copyright Act's essential goals⁵." Id. at 1989.

8 The Ninth Circuit has typically used a five-factor test, which accounts for the foregoing
 9 factors, to determine if attorney's fees are warranted: (1) the degree of success of the prevailing
 10 party; (2) the objective reasonableness of the losing party's arguments during litigation; (3) the
 11 need to make the prevailing party whole; (4) deterrence; and (5) the purposes of the Copyright Act.

12 See Oracle United States, Inc. v. Rimini St., 2016 U.S. Dist. LEXIS 128793, at *32-34 (D. Nev.
 13 Sep. 21, 2016) citing to Kirtsaeng at 1986; McCulloch v. Albert E. Price, Inc., 823 F.2d 316, 323
 14 (9th Cir. 1987); Jackson v. Axton, 25 F.3d 884, 890 (9th Cir. 1994). Further, “[t]he Ninth Circuit
 15 has held that “[t]he most important factor in determining whether to award fees under the
 16 Copyright Act, is whether an award will further the purposes of the Act.”” Cobbler Nev., LLC v.
 17 Cerritos, 2016 U.S. Dist. LEXIS 170644, at *12 (D. Or. Dec. 9, 2016) citing to Mattel, Inc. v.
 18 MGA Entm't, 705 F.3d 1108, 1111 (9th Cir. 2013).

19 The first factor, the degree of success of the prevailing party, weighs heavily in favor of
 20 Lokai, as Lokai expects summary judgment on all issues it intended to move forward with at trial,
 21 one of them being the copyright claim.

22 The second factor, objective reasonableness, also weighs heavily in favor of Lokai, as
 23 Defendant has thus far not put forth any defense, affirmative or otherwise, to any of the claims
 24 brought by Lokai, including the copyright claim. In fact, Defendant has taken objectively

25 inform a court's fee-shifting decisions: "frivolousness, motivation, objective unreasonableness[,]
 26 and the need in particular circumstances to advance considerations of compensation and
 27 deterrence." Kirtsaeng at 1985 (internal citation omitted).

28 ⁵ The Court states the purpose as "enriching the general public through access to creative works,"
 with "two subsidiary aims [of] *encouraging and rewarding authors' creations* (*emphasis added*)
 while also enabling others to build on that work." Kirtsaeng at 1986 (internal citations omitted).

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1 unreasonable steps by continuing to infringement in light of two (2) cease and desist letters and
 2 telephonic and electronic correspondence regarding the same, thereby forcing Lokai to bring this
 3 litigation and expend significant resources and time, including those of the Court. See Exhibit H
 4 at pgs. 1-20; See also Exhibit I at pgs. 1-3; See also Birnbaum Aff. at ¶ 8-9; See also Hueffner
 5 Dep. at 54:13-16; 60:6-10.

6 The foregoing also tilts the third factor, the need to make the prevailing party whole, in
 7 Lokai's favor, since Lokai's expenditures related to this litigation would not have been necessary
 8 had Defendant complied with either the two (2) cease and desist correspondence or the later
 9 telephonic and related electronic discussion. Further, as stated above, Defendant's purposeful
 10 destruction of evidence and non-existent business records makes it impossible for Lokai to
 11 determine the extent of damages. See Hueffner Dep. at 8:25-9:5; 9:13-11:1; 11:14-16; 12:4-11;
 12 17:21-24; 31:12-33:19; 37:16-22; 65:18-21; 66:2-3; 67:11-14; 99:3-4; 124:19-126:2.

13 The fourth factor, deterrence, likewise weighs heavily in favor of Lokai, as Defendant (1)
 14 has shown he is willing to continue infringement in light of cease and desist demands (see
 15 Hueffner Dep. at 54:13-16; 60:6-10), and, (2) believes he is "judgment-proof" (see Exhibit M at
 16 13:4).

17 The fifth factor, the purposes of the Copyright Act, also weighs heavily in Lokai's favor.
 18 As the Court in Kirtsaeng stressed, the purpose of the Act is to "enrich[] the general public through
 19 access to creative works," with "two subsidiary aims [of] *encouraging and rewarding authors' 20*
creations (emphasis added) while also enabling others to build on that work." Kirtsaeng at 1986
 21 (internal citations omitted). Awarding attorney's fees to Lokai furthers those purposes as it
 22 rewards the owner of a copyright that was copied in its entirety, without any independent creative
 23 additions whatsoever. See Exhibit B at pgs. 2-3; See also Exhibit L at pgs. 2, 4.

24 As all five factors, including objective reasonableness and promoting the purposes of the
 25 Copyright Act, weigh heavily in Lokai's favor, a fee award for Lokai is appropriate in this
 26 instance.⁶

27

28 ⁶ Lokai can submit invoices describing the total amount of attorney's fees in a supplemental brief
 upon the Court's request.

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V. CONCLUSION

2 For the reasons stated above, there are no genuine issues of material fact as to Defendant's
3 liability for counterfeiting, trademark infringement, false designation of origin, false description of
4 fact and false representation of fact and copyright infringement, as a matter of law. Therefore, and
5 in light of Defendant's actions showing a willful disregard for intellectual property rights and laws,
6 Lokai respectfully requests that this Court grant the Motion in its entirety, enter summary
7 judgment on the issues herein and award statutory damages and attorney's fees stemming from the
8 same, along with any other relief the Court sees fit.

9 || DATED: 1/20/2017

FENNEMORE CRAIG, P.C.

By: /s/ Shannon S. Pierce
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Shannon Pierce (SBN 12471)
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Case 3:16-cv-00283-RCJ-VPC Document 34 Filed 01/20/17 Page 18 of 19

CERTIFICATE OF SERVICE

I certify that I am an employee of FENNEMORE CRAIG, P.C., and that on this date, pursuant to FRCP 5(b), I am serving a true and correct copy of the attached PLAINTIFF LOKAI HOLDINGS, LLC'S MOTION FOR SUMMARY JUDGMENT ON COUNTS I, II, III AND VI OF THE COMPLAINT – ORAL ARGUMENT REQUESTED on the parties set forth below by:

5 XX Placing an original or true copy thereof in a sealed envelope placed for
7 collection and mailing in the United States Mail, at Reno, Nevada, postage
 prepaid, following ordinary business practices

Via Facsimile (Fax)

____ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

_____ Federal Express (or other overnight delivery)

_____ E-service effected by CM/ECF

addressed as follows:

Craig Hueffner
Absolute Marketing
725 Sydney Drive
Racine, WI 53402

DATED this 20th day of January, 2017.

/s/ Debbie Sorensen
An employee of FENNEMORE CRAIG, P.C.

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INDEX OF EXHIBITS

Exhibit No.	Description
A	Trademark Certificates of Registration
B	Copyright Certificate of Registration and Images
C	Images of Authentic Lokai Bracelets
D	Deposition of Craig Hueffner
E	Absolute Marketing Documents
F	Exhibitor Information
G	Defendant's Discovery Responses
H	Cease and Desist Correspondence
I	Email Correspondence with Craig Hueffner
J	Notification of Infringement in Reno, NV
K	Images of Defendant Displaying Counterfeit Bracelets and Infringing Advertising Material
L	Images of Counterfeit Bracelets Obtained from Defendant
M	Portions of Transcript from August 25, 2016 Status Conference
N	Affidavit of Shane I. Birnbaum
O	Affidavit of Brent M. Davis
P	Affidavit of Michael LaFrieda
Q	Affidavit of Camilo Lopez
R	Affidavit of Shannon S. Pierce

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EXHIBIT A:
TRADEMARK CERTIFICATES OF
REGISTRATION

United States of America
United States Patent and Trademark Office

LoKai

Reg. No. 4,429,129

LOKAI HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)
27 WEST 24TH ST
NEW YORK, NY 10010

Registered Nov. 5, 2013

FOR: BRACELETS; JEWELRY; RUBBER OR SILICON WRISTBANDS IN THE NATURE OF
A BRACELET, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

Int. Cl.: 14

FIRST USE 6-4-2013; IN COMMERCE 6-4-2013.

TRADEMARK

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

PRINCIPAL REGISTER

SN 85-170,908, FILED 11-6-2010.

JAY FLOWERS, EXAMINING ATTORNEY



Lea Storch, Esq.

Deputy Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office

LOKAI

Reg. No. 4,637,357

Registered Nov. 11, 2014

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

LOKAI HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)
12TH FLOOR
170 VARICK STREET
NEW YORK, NY 10013

FOR: RETAIL STORE SERVICES FEATURING JEWELRY, IN CLASS 35 (U.S. CLS. 100, 101
AND 102).

FIRST USE 6-4-2013; IN COMMERCE 6-4-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 4,429,129.

SER. NO. 86-298,717, FILED 6-3-2014.

JUSTIN SEVERSON, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America
United States Patent and Trademark Office

lokai

Reg. No. 4,640,686

Registered Nov. 18, 2014

Int. Cl.: 14

TRADEMARK

PRINCIPAL REGISTER

LOKAI HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)
12TH FLOOR
170 VARICK STREET
NEW YORK, NY 10013

FOR: BRACELETS; JEWELRY; RUBBER OR SILICON WRISTBANDS IN THE NATURE OF
A BRACELET, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 6-0-2013; IN COMMERCE 6-0-2013.

OWNER OF U.S. REG. NO. 4,429,129.

THE MARK CONSISTS OF THE WORD "LOKAI" WITH AN OPEN DOT ABOVE THE LETTER
"I" AND A SOLID DOT BELOW THE LETTER "I".

SER. NO. 86-244,019, FILED 4-7-2014.

JUSTIN SEVERSON, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America
United States Patent and Trademark Office

lokai

Reg. No. 4,742,254

Registered May 26, 2015

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

LOKAI HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)
12TH FLOOR
170 VARICK STREET
NEW YORK, NY 10013

FOR: ONLINE RETAIL STORE SERVICES FEATURING JEWELRY, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-4-2013; IN COMMERCE 6-4-2013.

OWNER OF U.S. REG. NO. 4,429,129.

THE MARK CONSISTS OF THE WORD "LOKAI" WITH AN OPEN DOT ABOVE THE LETTER "I" AND A SOLID DOT BELOW THE LETTER "I".

SER. NO. 86-298,724, FILED 6-3-2014.

JUSTIN SEVERSON, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 4,636,915

Registered Nov. 11, 2014

Int. Cl.: 14

TRADEMARK

PRINCIPAL REGISTER

LOKAI HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)
12TH FLOOR
170 VARICK STREET
NEW YORK, NY 10013

FOR: BRACELETS; JEWELRY; RUBBER OR SILICON WRISTBANDS IN THE NATURE OF
A BRACELET, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 1-0-2014; IN COMMERCE 1-0-2014.

THE MARK CONSISTS OF TWO CONCENTRIC STYLIZED WATER DROPLETS CONTAIN-
ING TWO CIRCLES.

SER. NO. 86-244,023, FILED 4-7-2014.

JUSTIN SEVERSON, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 4,698,780

Registered Mar. 10, 2015

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

LOKAI HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)
12TH FLOOR
170 VARICK STREET
NEW YORK, NY 10013

FOR: ONLINE RETAIL STORE SERVICES FEATURING JEWELRY, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-4-2013; IN COMMERCE 6-4-2013.

THE MARK CONSISTS OF TWO CONCENTRIC STYLIZED WATER DROPLETS CONTAINING TWO CIRCLES.

SER. NO. 86-298,728, FILED 6-3-2014.

JUSTIN SEVERSON, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America
United States Patent and Trademark Office

FIND YOUR BALANCE

Reg. No. 4,870,494

LOKAI HOLDINGS, LLC (DELAWARE LIMITED LIABILITY COMPANY)
SUITE 602

Registered Dec. 15, 2015
36 EAST 31ST STREET
NEW YORK, NY 10016

Int. Cl.: 14

FOR: BRACELETS; JEWELRY; RUBBER OR SILICON WRISTBANDS IN THE NATURE OF
A BRACELET, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

TRADEMARK

FIRST USE 6-4-2013; IN COMMERCE 6-4-2013.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 86-623,317, FILED 5-8-2015.

THOMAS MANOR, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

Case 3:16-cv-00283-RCJ-VPC Document 34-2 Filed 01/20/17 Page 1 of 4

EXHIBIT B:
COPYRIGHT CERTIFICATE OF
REGISTRATION AND IMAGES

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Register of Copyrights, United States of America

Registration Number

VA 1-968-047

Effective Date of Registration:
November 03, 2014

Title

Title of Work: Lokai Bracelet Hangtag

Completion/Publication

Year of Completion: 2011
Date of 1st Publication: December 01, 2011
Nation of 1st Publication: United States

Author

- **Author:** Lokai Holdings, LLC
- Author Created:** *text, 2-D artwork
- Work made for hire:** Yes
- Citizen of:** United States
- Domiciled in:** United States

Copyright Claimant

Copyright Claimant: Lokai Holdings, LLC
 170 Varick Street, 12th Floor, New York, NY, 10013, United States

Certification

Name: Ronald S. Bienstock, Esq.
Date: October 24, 2014

Correspondence: Yes
Copyright Office notes: Regarding author information: *Text is name and slogan only; names and slogans not copyrightable. 37 CFR 202.1

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LOK000084



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LOK000085



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EXHIBIT C:
IMAGES OF AUTHENTIC LOKAI
BRACELETS

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LOK000000



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LOK000002

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Lokai Honoring
New York, NY 10016
Made in China
Materials from Mt. Everest
and The Dead Sea

LOK000083

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LOK000001





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LOK000003

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LOK000004

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EXHIBIT D:
DEPOSITION OF CRAIG HUEFFNER

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BAY AREA COURT REPORTING, INC.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LOKAI HOLDINGS, LLC, a Delaware
Corporation,

Plaintiff,

vs.

Case No.
3:16-cv-00283-RCJ-VPC

ABSOLUTE MARKETING, CRAIG
HUEFFNER and DOES 1-10,

Defendants.

...../

VIDEO DEPOSITION OF CRAIG HUEFFNER

Taken Pursuant to Notice of
Taking Deposition by Counsel
for the Plaintiff

DATE: Tuesday, November 15, 2016
TIME: 10:00 a.m. to 3:20 p.m.
PLACE: Bay Area Reporting, Inc.
620 East Twiggs Street, Suite 305
Tampa, Florida 33602
REPORTER: Deborah J. Slinn, RPR, CSR
Court Reporter, Notary Public
State of Florida at Large

Bayareareporting@gmail.com

(866) 240-9500

Case 3:16-cv-00283-RCJ-VPC Document 34-4 Filed 01/20/17 Page 3 of 26

BAY AREA COURT REPORTING, INC.

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1	APPEARANCES FOR THE PLAINTIFF		1	THE VIDEOGRAPHER: This is a video taken in	
2	Brent "Giles" Davis, Esquire		2	the matter of Lokai Holdings, LLC, versus Absolute	
3	Shane I. Birnbaum, Esquire		3	Marketing, et al., on November 15, 2016, at 10:00	
4	Scarinci Hollenbeck		4	a.m.	
5	1100 Valley Brook Avenue		5	Counsel, please introduce yourselves for the	
6	Lyndhurst, New Jersey 07071-0790		6	record. Afterwards, the court reporter will swear	
7	Shannon S. Pierce, Esquire		7	in the witness.	
8	Fennemore Craig, P.C.		8	MR. DAVIS: Brent Davis, Scarinci and	
9	300 East Second Street, Suite 1510		9	Hollenbeck for Plaintiff Lokai Holdings, LLC.	
10	Reno, Nevada 89501		10	MR. BIRNBAUM: Shane Birnbaum, Scarinci and	
11	(via telephone)		11	Hollenbeck for Plaintiff Lokai Holdings, LLC.	
12	Judge Valerie P. Cooke		12	MS. PIERCE: And telephonically, Shannon	
13	400 South Virginia Street		13	Pierce of Fennemore Craig on behalf of the	
14	Reno, Nevada 89501		14	Plaintiff.	
15	(via telephone)		15	CRAIG HUEFFNER: Being first duly sworn by	
16	Also Present: Bill Watson (Videographer)		16	a Notary Public to tell the truth, deposes and	
17			17	says as follows:	
18	APPEARANCE FOR THE DEFENDANTS		18	EXAMINATION BY MR. DAVIS:	
19	Craig Hueffner, Pro Se		19	Q Good morning, Mr. Hueffner. Is it Hueffner or	
20			20	Hueffner?	
21			21	A Hueffner.	
22			22	Q Hueffner. Have you ever been deposed before?	
23			23	A Yes.	
24			24	Q So you understand how this works, I'm going to	
25			25	ask you questions. If you don't understand my question, please let us know or else we'll presume and the record	
Page 3			Page 5		
1	EXAMINATION		1	will presume that you understood the question.	
2	Witness Name	Page	2	If you need to take a break, just let us know,	
3	CRAIG HUEFFNER		3	we can do that.	
4	Direct by Brent Davis, Esquire 4		4	Have you -- have you taken any medication	
5	Telephonic conference with Judge Cooke 99		5	today that would affect your impact to tell the truth?	
6			6	A No.	
7			7	Q Any drugs or alcohols?	
8			8	A No.	
9			9	Q Okay. How did you arrive here today?	
10			10	A Uber.	
11			11	Q And I want to start, have this marked as	
12	E X H I B I T S	Page	12	Hueffner 1. I am going to hand you what's been marked	
13	Exhibit	Description	13	as H-1, Mr. Hueffner. Can you tell me what these	
14	H-1	Request for production 5	14	documents are?	
15	H-2	State of Florida document 12	15	A Request for production.	
16	H-3	Dallas Market Center document 15	16	Q These are your responses to the discovery	
17	H-4	Boston Gift Show document 16	17	requests that were served on you by Lokai?	
18	H-5	Photo 18	18	A Correct.	
19	H-6	Letter dated 8-11-15 25	19	Q And so the first page which is blurry here, I	
20	H-7	Letter dated 8-18-15 41	20	know you sent a cleaner copy, but you did not provide	
21	H-8	Bienstock and Michael document 46	21	initial disclosures; is that correct?	
22	H-9	Photos 62	22	A Correct.	
23	H-10	Photos 67	23	Q Okay. So let's go through that. Do you have	
24	H-11	Photo 68	24	any witnesses that you intend to call in this	
25	H-12	Shipping label 69	25	proceeding?	
	H-13	Photo 73			
	Thumb drive 75				
	(Exhibits retained by Attorney Davis)				

2 (Pages 2 to 5)

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Page 6	Page 8
<p>1 A Not sure yet.</p> <p>2 Q Well, that's actually not the answer that we</p> <p>3 need, Mr. Hueffner. You've been given two chances by</p> <p>4 the Court to supply initial disclosures and you haven't.</p> <p>5 So, this is a yes or no question.</p> <p>6 Do you have any witnesses that you plan to</p> <p>7 call at this proceeding?</p> <p>8 A Not sure yet.</p> <p>9 Q With the exception of the documents that you</p> <p>10 provided to us, do you have any additional documents</p> <p>11 that you plan to use in this proceeding?</p> <p>12 A Possibly.</p> <p>13 Q The judge in this case explained to you twice</p> <p>14 in two different telephonic conferences that you have to</p> <p>15 report on what was required of initial disclosures; is</p> <p>16 that correct?</p> <p>17 A I don't remember.</p> <p>18 Q You don't remember. Did you attend</p> <p>19 telephonically a conference with, a status conference</p> <p>20 with the Court, on August 25, 2016?</p> <p>21 A Yes.</p> <p>22 Q Okay. And you don't remember the judge very</p> <p>23 meticulously talking about initial disclosures and your</p> <p>24 responsibilities of them.</p> <p>25 A Correct.</p>	<p>1 correct?</p> <p>2 A Correct.</p> <p>3 Q Okay. Let's take a step back. At anytime did</p> <p>4 you sell bracelets that resembled the Lokai bracelet?</p> <p>5 A State the question again.</p> <p>6 Q Did you sell bracelets that had a Lokai tag on</p> <p>7 them?</p> <p>8 A Yes.</p> <p>9 Q Okay. And you are saying you do not have any</p> <p>10 of these bracelets left?</p> <p>11 A Asked and answered.</p> <p>12 Q This is my deposition and you will answer the</p> <p>13 questions that I ask you, Mr. Hueffner.</p> <p>14 A You asked it and I answered it before.</p> <p>15 Q I'm going to ask a lot of questions a lot of</p> <p>16 times and how long we're here is going to depend on how</p> <p>17 cooperative you are. I'm going to ask that again.</p> <p>18 A Asked and answered.</p> <p>19 MR. DAVIS: It's only 7:00 out there; right?</p> <p>20 MR. BIRNBAUM: Judge isn't going to be there.</p> <p>21 MS. PIERCE: Yes, it's only 7:00, but I'll</p> <p>22 start keeping a running list.</p> <p>23 MR. DAVIS: Okay.</p> <p>24 BY MR. DAVIS:</p> <p>25 Q Did you ever have in your possession bracelets</p>
<p style="text-align: center;">Page 7</p> <p>1 Q And then did you attend telephonically a</p> <p>2 status conference, a case management conference, with</p> <p>3 the Court on November 4th?</p> <p>4 A Yes.</p> <p>5 Q Do you remember the judge explaining in detail</p> <p>6 again what your requirements were under initial</p> <p>7 disclosures?</p> <p>8 A I remember talking about disclosures. And</p> <p>9 telling me I need to send them a letter. Other than</p> <p>10 that, I don't --</p> <p>11 Q But even though your initial, the initial</p> <p>12 disclosures that you provided on handwritten note on a</p> <p>13 copy of our request for production, the things that said</p> <p>14 that you had nothing to disclose you are now saying you</p> <p>15 might have something to disclose.</p> <p>16 A Correct.</p> <p>17 Q And -- all right.</p> <p>18 So let's go to page two of Exhibit H-1.</p> <p>19 So the first request asked for a physical</p> <p>20 sample of all products that were offered at anytime</p> <p>21 offered for sale or sold by defendant or by any third</p> <p>22 party defendants' request which are otherwise in</p> <p>23 possession, custody or control defendant which bear or</p> <p>24 embody or otherwise use the Lokai bracelet natural</p> <p>25 products. And your answer is not available; is that</p>	<p style="text-align: center;">Page 9</p> <p>1 that have the Lokai tag on them?</p> <p>2 A Yes.</p> <p>3 Q Okay. What did you do with them?</p> <p>4 A Sold some, gave some away. Threw them in the</p> <p>5 garbage.</p> <p>6 Q Where did you throw them in the garbage?</p> <p>7 A In the garbage can.</p> <p>8 Q The location.</p> <p>9 A I don't remember.</p> <p>10 Q You don't remember. Okay. How many did you</p> <p>11 have that you threw away?</p> <p>12 A I don't remember.</p> <p>13 Q The second request asks for a physical sample</p> <p>14 of all documents or other material, products or pieces</p> <p>15 including but not limited poster signs, billboards,</p> <p>16 advertisements, product brochures and other marketing</p> <p>17 material that were used at anytime by defendant or which</p> <p>18 otherwise in possession, custody or control of the</p> <p>19 defendant which bear embody or otherwise use the Class</p> <p>20 35 trademarks or the Lokai website images.</p> <p>21 And your answer is not available; is that</p> <p>22 correct?</p> <p>23 A Correct.</p> <p>24 Q Did you ever have in your possession any</p> <p>25 materials that would fall into this category?</p>

3 (Pages 6 to 9)

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1	A Yes.	1	or use the Class 35 trademarks and/or the Lokai website
2	Q <u>And what did you do with them?</u>	2	images. And you answered zero; is that correct?
3	A <u>Threw them in the garbage.</u>	3	A Correct.
4	Q When?	4	Q Did you ever have a banner or poster like
5	A <u>Probably after you sent me a -- when I got the</u>	5	thing that had the Lokai trademark on it?
6	<u>lawsuit.</u>	6	A Yes.
7	Q <u>The same thing for the bracelets in request</u>	7	Q <u>And what did you do with that?</u>
8	<u>number one?</u>	8	A <u>Threw it in the garage.</u>
9	A Yes.	9	Q <u>After you were served with the Complaint in</u>
10	Q <u>So let me get this straight. So after you</u>	10	<u>this lawsuit.</u>
11	<u>knew there was litigation against you regarding this</u>	11	A Correct.
12	<u>stuff you destroyed evidence.</u>	12	Q All right. <u>Have this marked as H-2.</u>
13	A <u>There was no evidence to destroy.</u>	13	Going to hand you what's been marked as
14	Q <u>You said you had bracelets.</u>	14	Exhibit H-2, Mr. Hueffner. If you can take a look at
15	A <u>It's my product, I can do with it what I want</u>	15	this document. It's multiple pages, Mr. Hueffner. Can
16	<u>to do with it.</u>	16	you take a look at the document, please?
17	Q <u>So, yes, so you disposed of this evidence</u>	17	A (Witness complies.)
18	<u>after the lawsuit was initiated.</u>	18	Q First page of Exhibit H-2 is a printout from
19	A <u>I disposed of my inventory.</u>	19	the Florida Department of State, Division of
20	Q <u>At any point did you have any sales records</u>	20	Corporations; is that correct?
21	<u>regarding the counterfeit Lokai bracelets that you had?</u>	21	A Correct.
22	A No.	22	Q <u>And it's a fictitious name filing for Absolute</u>
23	Q <u>You never kept sales records.</u>	23	Marketing; is that correct?
24	A No.	24	A Correct.
25	Q <u>How about purchase records?</u>	25	Q <u>The owner information is you; correct?</u>
Page 11		Page 13	
1	A No.	1	A <u>Correct.</u>
2	Q Okay. So if you didn't keep records, if you	2	Q And the address you gave the Florida
3	go to page one, two, three, four, five of Exhibit H-1.	3	Department of State is 4942 Indian Hills Drive, Racine,
4	It's the page that has interrogatories one, two and	4	Wisconsin 53406; is that correct?
5	three on them.	5	A Correct.
6	A No, I don't have that page.	6	Q And what's that address?
7	Q Yes, you do. You are on page five.	7	A An address to Racine, Wisconsin.
8	<u>Interrogatory number two, identify the total number of</u>	8	Q What is your connection to that address?
9	<u>all products identified in interrogatory number one that</u>	9	A Nothing any more.
10	<u>were sold at anytime by defendant or indirectly by any</u>	10	Q What was it at the time you filed?
11	<u>third parties at defendants' request.</u>	11	A It was a friend's house that I had my mail
12	<u>And you answered 50 to 60; is that correct?</u>	12	forwarded to after my divorce.
13	A Correct.	13	Q And on the next page you provided the same
14	Q <u>How did you come up with that number if you</u>	14	address to the Florida Department of State?
15	<u>didn't keep any sales records as you just testified to?</u>	15	A Correct.
16	A It was a guess.	16	Q And on the first page it says that the
17	Q Anything else on here a guess?	17	Absolute Marketing fictitious name is still active; is
18	A No, not to my knowledge.	18	that correct?
19	Q Okay. Also interested in your answer to	19	A Correct.
20	interrogatory number eight. Identify all documents and	20	Q But you have said that you had terminated this
21	materials, products, or pieces including but not limited	21	name; isn't that correct.
22	to posters, signs, billboards, advertisement, cards,	22	A Correct?
23	brochures and other marketing materials used by	23	Q So which one is the truth?
24	defendant or which are otherwise in possession, custody	24	A Well, we got to find the other paperwork from
25	and control of defendant which bear, embody or otherwise	25	the Division of Corporation, I guess.

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<p>1 Q You filed something with the Florida 2 Department of State terminating fictitious name use? 3 A I did. 4 Q When did you file that? 5 A 2015, sometime. 6 Q Did you cease using Absolute Marketing in 7 2015? 8 A Yes. 9 Q You didn't use Absolute Marketing for any, 10 anything past 2015. 11 A Yes, I did. 12 Q Okay. Well, you said -- wait. Didn't you 13 just testify that you stopped using it in 2015? 14 A I use that and my personal name. 15 Q I'm confused. So let me understand. You just 16 testified that in 2015 you filed with the Florida 17 Department of State terminating your use of the 18 fictitious name Absolute Marketing. 19 A With the Florida Department, yes, with the 20 Florida Department of State, correct. 21 Q But you continued to use Absolute Marketing? 22 A Correct. 23 Q Okay. So why did you terminate it in Florida? 24 A Because I was no longer in Florida. 25 Q Did you register Absolute Marketing with any</p>	<p>1 Q Do you have any connection to that address? 2 A I lived there for three months. 3 I would like to state that this also says 4 Absolute Advertising on the top of Exhibit H-3. 5 Q It's very nice that you want to state that, 6 but there is not a question pending, Mr. Hueffner. 7 I am going to have this marked as H-4. 8 I'm going to hand you what's been marked as 9 Exhibit H-4. We're going to go through this page by 10 page. 11 Page one of H-4 lists Absolute Marketing as 12 exhibiting at the Boston Gift Show. Did you exhibit at 13 the Boston Gift Show, sir? 14 A I did. 15 Q And did you sell counterfeit Lokai bracelets 16 at the Boston Gift Show? 17 A I did not. 18 Q You didn't. What did you sell there? 19 A Gift items. 20 Q Such as -- do you sell ten-foot length 21 charging cables? 22 A Yes. 23 Q And were you selling those at the Boston Gift 24 Shop? 25 A Yes.</p>
<p>1 other states? 2 A I did not. It's a fictitious name. 3 Q I am going to have this marked as H-3. 4 I'm going to hand you what's been marked as 5 H-3. If you could take a look at that exhibit, please. 6 A Yes. 7 Q Okay. And this is, this is from the Dallas 8 Market Center. Did you exhibit at the Dallas Market 9 Center? 10 A Yes. 11 Q Okay. And your contact has the e-mail address 12 of <u>Craig underscore Hueffner at msn.com?</u> 13 A <u>Correct.</u> 14 Q <u>Did you use that e-mail?</u> 15 A <u>Yes.</u> 16 Q <u>Do you still use that e-mail?</u> 17 A <u>Yes.</u> 18 Q And you have another address of 3214 West 19 Plaza Drive, Franklin, Wisconsin 53132; is that correct? 20 A That's what's on the paper. 21 Q Was that the address you provided to the 22 Dallas Market Center? 23 A No. 24 Q Where did they get that address? 25 A I have no idea.</p>	<p>1 Q <u>But you did not sell Lokai bracelets.</u> 2 A <u>I sold Lokai bracelets, correct.</u> 3 Q <u>You did?</u> 4 A <u>Correct.</u> 5 Q Okay. But didn't you just say a few minutes 6 ago that you did not? 7 A You asked if I sold counterfeit Lokai 8 bracelets and I answered that. 9 Q Wait. So you are claiming that the Lokai 10 bracelets that you sold were not counterfeits? 11 A I am not privy to that information. 12 Q Did you purchase them from Lokai? 13 A I don't know. 14 Q Where did you purchase them? 15 A Broad question. Cash and Carry events where 16 Lokai was at. 17 Q How much did you pay for them per bracelet? 18 A Anywhere from five to \$9. 19 In fact, they are all over the place. 20 Q Not a question pending, sir. 21 Do you have a banner for the Lokai bracelets? 22 A <u>I do not.</u> 23 Q <u>Did you?</u> 24 A <u>Yes, I did.</u> 25 Q <u>And it said it used several Lokai trademarks</u></p>

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<p>1 <u>on it; correct?</u></p> <p>2 A <u>It had the Lokai name.</u></p> <p>3 Q And it had the water droplet?</p> <p>4 A I don't know what you are looking at.</p> <p>5 Q Doesn't matter what I'm looking at, sir. It 6 was your banner.</p> <p>7 A I don't remember.</p> <p>8 Q All right. Well, let's take a look. Let's 9 mark this as H-5, please.</p> <p>10 I'm going to hand you what's been marked as 11 <u>Exhibit H-5. That's a picture of the Absolute Marketing</u> 12 <u>booth at the Boston Gift Show; is that correct?</u></p> <p>13 A Correct.</p> <p>14 Q <u>Okay. So there are Lokai banners on the left</u> 15 <u>side of the picture; is that correct?</u></p> <p>16 A Correct.</p> <p>17 Q And there are buckets, two buckets, of Lokai 18 bracelets in front of the banners; isn't that correct?</p> <p>19 A I can't tell.</p> <p>20 Q You can't tell, okay. Let's look at the 21 banner. So both banners say, has the Lokai stylized 22 trademark and the water droplet on it; isn't that true?</p> <p>23 A To be very honest with you I don't know where 24 this booth is at.</p> <p>25 Q Okay. But it's your booth.</p>	<p>1 wait for the judge to get on the phone to answer the question.</p> <p>2 Q Sir, we are not going to sit here --</p> <p>3 A Yes, we are.</p> <p>4 Q -- for hours.</p> <p>5 A This is not in discovery.</p> <p>6 Q You're refusing to answer the question?</p> <p>7 A I'm refusing to answer this. I do not know 9 what this is and I don't know whose booth this is.</p> <p>10 Q You just testified it was your booth.</p> <p>11 A I don't know. You showed me the paper and I 12 asked you what it was. And then you said --</p> <p>13 Q Okay.</p> <p>14 A -- showed it to me.</p> <p>15 MR. BIRNBAUM: Let's keep our voices down, 16 every one.</p> <p>17 Q We'll come back to this. We'll come back.</p> <p>18 Let's go back to H-4. Let's go to the second page of H-4.</p> <p>19 A (Witness complies.)</p> <p>20 Q This is listing Absolute Marketing as showing 21 at the -- at some kind of show in Los Angeles; is that 22 correct?</p> <p>23 A Yes.</p> <p>24 Q And you had a booth there?</p>
Page 19	Page 21
<p>1 A To be very honest with you I don't know where 2 this booth is at.</p> <p>3 Q That's not what I asked you.</p> <p>4 A I'm not sure.</p> <p>5 Q You already testified it was.</p> <p>6 A We don't know that this booth was at that 7 show.</p> <p>8 Q Oh, I do. So you had at least two banners 9 that bore the name Lokai.</p> <p>10 A No.</p> <p>11 Q No? Those aren't two separate banners?</p> <p>12 A No.</p> <p>13 Q It's one banner.</p> <p>14 A Correct.</p> <p>15 Q And somehow I can see through the middle of it 16 to what's behind it?</p> <p>17 A Correct.</p> <p>18 Q Did you get permission from Lokai to put their 19 name on banners?</p> <p>20 A I'm going to claim harassment. This stuff 21 here was not in discovery. So I guess maybe we should 22 wait for the judge, to call the judge. This is not in 23 discovery, any of this.</p> <p>24 Q I am going to ask you again, sir.</p> <p>25 A And I am going to claim to you I am going to</p>	<p>1 A I did not.</p> <p>2 Q You didn't?</p> <p>3 A No.</p> <p>4 Q Sir, stay on the page I'm at, please.</p> <p>5 A (Witness complies.)</p> <p>6 Q Did you register to show there?</p> <p>7 A Correct.</p> <p>8 Q You just didn't show up?</p> <p>9 A Correct.</p> <p>10 Q Let's go to the next page.</p> <p>11 A (Witness complies.)</p> <p>12 Q This is for a show at the Las Vegas Convention Center?</p> <p>13 A Correct.</p> <p>14 Q And Absolute Marketing registered a booth 15 there?</p> <p>16 A Correct.</p> <p>17 Q Absolute Marketing had a booth there?</p> <p>18 A Correct.</p> <p>19 Q And you sold what you claim to be legitimate 20 Lokai bracelets at that show?</p> <p>21 A I did not sell Lokai at this event. This is 22 September 18th to the 21st, 2016.</p> <p>23 Q Were you planning to sell the Lokai 24 bracelets at --</p>

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<p>1 might be documents somewhere in the world that you may 2 want to use?</p> <p>3 A I believe I will have documents and photos to 4 use. I believe I will have documents and photos to use.</p> <p>5 Q Okay. But you answered that none were 6 available to all of your production requests.</p> <p>7 A At the time of the questions asked that was 8 true. After that, now there are.</p> <p>9 Q And where are these documents?</p> <p>10 A On the Internet.</p> <p>11 Q What are these documents?</p> <p>12 A I sent them to you guys.</p> <p>13 Q Are there any additional documents?</p> <p>14 A Yes.</p> <p>15 Q And where are they? Why didn't you produce 16 those?</p> <p>17 A I was going to produce those to the Court.</p> <p>18 Q You don't have to produce them to the Court, 19 sir. You need to produce them to us in response to 20 discovery. Considering your deposition is today, the 21 Court ordered you to have all the documents produced to 22 us by this past Thursday. Shouldn't you have produced 23 the documents by this past Thursday?</p> <p>24 A I got more information yesterday about Lokai.</p> <p>25 Q What sort of information?</p>	<p>1 threw them out. 2 A Correct.</p> <p>3 Q Okay. You were aware that those were the 4 bracelets at issue in the lawsuit you were just served 5 with; correct?</p> <p>6 A Correct.</p> <p>7 Q Why did you decide to throw them out at that 8 moment?</p> <p>9 A Because that's what I was asked to do.</p> <p>10 Q When were you asked to do that, by whom?</p> <p>11 A Someone from the event I was at.</p> <p>12 Q Who?</p> <p>13 A I don't remember.</p> <p>14 Q What did they look like?</p> <p>15 A White woman.</p> <p>16 Q What was her position with the event?</p> <p>17 A I don't know.</p> <p>18 Q So anyone that walks up to you and tells you 19 to do something you do it.</p> <p>20 A They said they had a letter that -- the staff 21 member told me they had a letter that product could not 22 be sold at this event from a letter from you guys, so we 23 disposed of the product.</p> <p>24 Q Okay. But they didn't tell you to dispose of 25 it, they just said you couldn't sell it.</p>
Page 31	Page 33
<p>1 A Broad speculation. I need to show you -- I'll 2 get you the paperwork.</p> <p>3 Q No, describe it to me. Tell me what it is.</p> <p>4 We're here.</p> <p>5 A That your Lokai are being sold at hundreds of 6 locations throughout the United States between the price 7 range of a dollar and \$5.</p> <p>8 Q So the fact that there are other counterfeit 9 Lokai out there that Lokai hasn't gotten to yet or is 10 unaware of is relevant why?</p> <p>11 A We do not know if they are counterfeit or not.</p> <p>12 Q Okay. So you testified earlier that you threw 13 out the remaining bracelets with the Lokai tags after 14 this lawsuit was filed; is that correct?</p> <p>15 A Yes.</p> <p>16 Q You have been involved in lawsuits before.</p> <p>17 A Yes.</p> <p>18 Q Okay. And you were aware you were being sued 19 over those very bracelets that you threw out?</p> <p>20 A I was served a lawsuit.</p> <p>21 Q And the lawsuit was alleged that you had sold 22 counterfeit Lokai bracelets; correct?</p> <p>23 A Correct.</p> <p>24 Q The Lokai bracelets with tags that said Lokai 25 in your possession after you received the lawsuit you</p>	<p>1 A I had nowhere else to put it.</p> <p>2 Q You didn't think it would be prudent to hold 3 onto the bracelets.</p> <p>4 A I did not.</p> <p>5 Q You didn't think it was problematic that you 6 were disposing of the bracelets that were at issue of a 7 lawsuit which you say you were already in possession of.</p> <p>8 A I did not.</p> <p>9 Q And the same thing for your marketing 10 materials?</p> <p>11 A Correct.</p> <p>12 Q But you are claiming that they weren't 13 counterfeit?</p> <p>14 A Correct.</p> <p>15 Q How would we be able to determine if they are 16 counterfeit or not if you dispose of them?</p> <p>17 A I have no idea. I can only go back, and I am 18 not going to guess or speculate, from conversations I 19 had with your lawyer prior to that.</p> <p>20 Q How was the stuff -- the material that you 21 were selling at the event in Reno, how did it arrive at 22 the convention hall?</p> <p>23 A I don't remember.</p> <p>24 Q Sir, the court reporter has asked you several 25 times not to put your hands in front of your mouth.</p>

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<p>1 A I don't remember.</p> <p>2 Q How did you get to the -- how did you get to</p> <p>3 Reno?</p> <p>4 A I flew there.</p> <p>5 Q And was the event at the airport?</p> <p>6 A No.</p> <p>7 Q How did you get from the airport to the event?</p> <p>8 A Either a rental car or an Uber.</p> <p>9 Q Who just texted you, sir?</p> <p>10 A Some girl. I can put it on airplane mode.</p> <p>11 Q That's what I asked.</p> <p>12 Did you bring the goods with you on the</p> <p>13 flight?</p> <p>14 A I don't remember.</p> <p>15 Q You display a fair amount of product on your</p> <p>16 booths; correct?</p> <p>17 A Correct.</p> <p>18 Q Boxes and boxes of material; correct?</p> <p>19 A Correct.</p> <p>20 Q You don't remember if you checked several</p> <p>21 boxes of merchandise when you flew to Reno?</p> <p>22 A Correct.</p> <p>23 Q Do you normally have the goods -- if you are</p> <p>24 flying to an event do you normally bring the goods with</p> <p>25 you on the flight?</p>	<p>1 material with you to the airport?</p> <p>2 A No.</p> <p>3 Q Okay. So logically you didn't bring them with</p> <p>4 you on the plane; is that correct?</p> <p>5 A I can't guess.</p> <p>6 Q Well, how did they get to the airport if you</p> <p>7 didn't bring them with you?</p> <p>8 A I can't guess. It was six months ago.</p> <p>9 Q The marketing materials, these poster, or</p> <p>10 posters, where did you have them made or where did you</p> <p>11 get them?</p> <p>12 A Cash and Carry event.</p> <p>13 Q You purchased the poster from a third party?</p> <p>14 A I don't remember.</p> <p>15 Q You don't remember who -- where you got large</p> <p>16 posters for the Lokai bracelets?</p> <p>17 A I don't remember.</p> <p>18 Q Did you have to have them printed -- did you</p> <p>19 order a specific printing?</p> <p>20 A I did not.</p> <p>21 Q So you just bought these posters from a third</p> <p>22 party.</p> <p>23 A I don't remember.</p> <p>24 Q Did you find them in the street?</p> <p>25 A I did not.</p>
<p>1 A Every situation is different.</p> <p>2 Q Okay. So how do you -- tell me the various</p> <p>3 ways you get the material you sell at these shows to the</p> <p>4 show.</p> <p>5 A Ship. They would be shipped.</p> <p>6 Q Okay. So if that's your general practice,</p> <p>7 does that help your memory? Did you ship the products</p> <p>8 to the Reno show?</p> <p>9 A I don't remember.</p> <p>10 Q Well, when I asked you what your normal</p> <p>11 practice was the only thing you came up with was</p> <p>12 shipped. So if you were deviating from your normal</p> <p>13 practice I would think that that would stand out.</p> <p>14 So did you ship the products to the Reno show?</p> <p>15 A I don't remember.</p> <p>16 Q Did you take the products, the several boxes</p> <p>17 as you've already identified, and checked them as</p> <p>18 luggage on your flight?</p> <p>19 A It's a broad question. Can you please restate</p> <p>20 the question?</p> <p>21 Q When you were shipping the material that you</p> <p>22 were selling and displaying at the Reno trade show that</p> <p>23 you were served at; do you understand it so far?</p> <p>24 A Yes.</p> <p>25 Q Did you bring the several boxes of that</p>	<p>1 Q Okay. You bought them.</p> <p>2 A I did not.</p> <p>3 Q They were given to you.</p> <p>4 A That's my assumption, but I cannot guess.</p> <p>5 Q So you have no recollection of where these</p> <p>6 posters came from.</p> <p>7 A I don't remember.</p> <p>8 Q When did you dispose of those?</p> <p>9 A I don't remember.</p> <p>10 Q Are you sure you disposed of them?</p> <p>11 A Correct.</p> <p>12 Q How did you dispose of them?</p> <p>13 A Dumpster.</p> <p>14 Q Where was the dumpster?</p> <p>15 A In Reno.</p> <p>16 Q Okay. So again you remember you disposed of</p> <p>17 them after you received the lawsuit.</p> <p>18 A Correct.</p> <p>19 Q And because they are no longer in your</p> <p>20 possession there is no way to tell exactly what they</p> <p>21 said on them.</p> <p>22 A I cannot guess.</p> <p>23 Q Did you have any other materials that said</p> <p>24 Lokai on them?</p> <p>25 A I don't remember.</p>

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<p>1 Q Were the bracelets that you sold individually 2 wrapped in plastic?</p> <p>3 A Some were.</p> <p>4 Q Did you place them in the plastic individual 5 wrapping or did you receive them like that?</p> <p>6 A I received them like that.</p> <p>7 Q This material that you did provide, these 8 documents that you did provide in discovery, do you know 9 any of the individuals who were selling these alleged 10 Lokai bracelets for one to \$5?</p> <p>11 A I do not.</p> <p>12 Q Okay. Do you know anyone who has firsthand 13 knowledge of these sales?</p> <p>14 A I do not.</p> <p>15 Q You also testified that you didn't know if 16 these bracelets being sold for one to \$5 were 17 counterfeit or not. So what could you do to find that 18 out?</p> <p>19 A I never said that.</p> <p>20 Q You didn't testify earlier that when I asked 21 you about the documents that you provided in discovery 22 that showed the sale of counterfeit bracelets, you 23 didn't answer that you don't know if they are 24 counterfeit or not?</p> <p>25 A What you just asked was one to \$5.</p>	<p>1 bracelets or not; correct?</p> <p>2 A I don't know.</p> <p>3 Q You just testified that if you physically 4 examined, you would have to physically examine a 5 bracelet to determine whether or not it's counterfeit; 6 is that correct?</p> <p>7 A Correct.</p> <p>8 Q If we were able to physically inventory 9 examine your inventory we would be able to determine 10 whether they were counterfeits or not.</p> <p>11 A Correct.</p> <p>12 Q So it would have been really helpful if you 13 didn't destroy your inventory.</p> <p>14 MR. DAVIS: Can you read back the question, 15 please? I don't think he heard it.</p> <p>16 (The record was read by the reporter)</p> <p>17 A Restate the question.</p> <p>18 MR. DAVIS: Can you repeat the question again, 19 please?</p> <p>20 A It's a statement.</p> <p>21 (The record was read by the reporter)</p> <p>22 Q That's a question, sir.</p> <p>23 A I cannot guess.</p> <p>24 Q And it would have been -- we would have been 25 able to examine the posters if you had not destroyed</p>
<p>1 Q That doesn't answer my question, sir. Earlier 2 when I asked you about this material that you provided 3 in discovery that had listings of product purporting to 4 be Lokai bracelets, and I referred to them as 5 counterfeits, did not you answer you don't know if they 6 are counterfeits or not?</p> <p>7 A Correct, I did answer that.</p> <p>8 Q Okay. So how do we find out if they are 9 counterfeits?</p> <p>10 A I guess you would purchase them and -- I don't 11 know.</p> <p>12 Q We would have to examine the actual bracelets; 13 correct?</p> <p>14 A I guess.</p> <p>15 Q Just like if we -- if you hadn't disposed of 16 the inventory you had we could examine those bracelets 17 and determine whether they were counterfeits or not.</p> <p>18 A I cannot guess.</p> <p>19 Q I am not asking you to guess.</p> <p>20 A Repeat the question.</p> <p>21 Q If you had not disposed of your inventory they 22 could be physically examined; yes?</p> <p>23 A Correct.</p> <p>24 Q And once they were physically examined they 25 could be determined whether they were legitimate Lokai</p>	<p>1 them or disposed of them; correct?</p> <p>2 A I guess.</p> <p>3 Q But as soon as you got the lawsuit you threw 4 away everything that said Lokai on it.</p> <p>5 A Correct.</p> <p>6 Q Knowing that there was a lawsuit against you 7 involving Lokai.</p> <p>8 A Restate the question.</p> <p>9 Q You threw out everything that said Lokai on it 10 in your possession after you knew there was a lawsuit 11 filed by Lokai against you.</p> <p>12 A Correct.</p> <p>13 Q Let's go back to Exhibit H-7, please. Exhibit 14 H-7 is a letter dated August 18th, 2015, from the firm 15 of Bienstock and Michael to you; is that correct?</p> <p>16 A Correct.</p> <p>17 Q To the e-mail Craig underscore Hueffner at 18 msn.com; correct?</p> <p>19 A Correct.</p> <p>20 Q And it was physically sent to the address 4942 21 Indian Hills Drive, Racine, Wisconsin; correct?</p> <p>22 A That's what's stated on this paper.</p> <p>23 Q Okay. And the Indian Hills Drive address is 24 the same one that you used when you registered Absolute 25 Marketing at various trade shows; correct?</p>

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<p>1 A Correct. 2 Q Okay. And with the State of Florida; correct? 3 A Correct. 4 Q Okay. Did you receive this letter? 5 A No. 6 Q Were you still having your mail sent to 4942 Indian Hills Drive -- 7 A No. 8 Q -- August 2015? 9 But you were still using it to register with trade shows in 2016. 10 A No. 11 Q Can you look at page, Exhibit H-4, sir? Page one, the address is 4942 Indian Hills; correct? 12 A Correct. 13 Q Page two, 4942 Indian Hills; correct? 14 A Correct. 15 Q Same with every other registration with the exception of the Surf Expo which doesn't list a street address; correct? 16 A Correct. 17 Q Okay. Were you or were you not using the 4942 Indian Hills address to register at these shows that were held in 2016? 18 A I was not.</p>	<p>1 Q Have you ever been accused of selling counterfeit products before? 2 A I have not. 3 Q Have you ever accidentally purchased counterfeit products before that you determined later on were not real? 4 A I don't know. 5 Q Have you ever asked for verification of what the product you are purchasing are legitimate products and not counterfeits? 6 A I have not. 7 Q Sir, you have testified you have been through lawsuits before; yes? 8 A Yes. 9 Q Did you have to produce discovery in those lawsuits? 10 A Yes. 11 Q So you were aware that on the date you were served with this current lawsuit you were aware of the discovery process in a lawsuit. 12 A My last lawsuit was a long time ago and it had nothing to do with this type of lawsuit. 13 Q That's not my question, sir. My question was, you just testified that you knew that lawsuits, there was a discovery process which you would be asked to</p>
<p>1 Q Did -- 2 A Like I stated before, if you've been to events for a long period of time, you just say repeat the contract. 3 Q But because you didn't use that address you didn't feel a need to update? 4 A Correct. 5 Q In case anyone needed to contact you? 6 A Correct. 7 Q Because you didn't want to be contacted? 8 A No, I have no reason to be contacted. 9 Q You can't think of what happens if you sell a product to somebody and it's defective shouldn't they have a way to get in touch with you? 10 A No warranty, no returns. 11 Q How long have you been showing at these events? 12 A I have been a gypsy my whole life. 13 Q That's not the question, sir. How long have you been showing at these events? How long have you been selling product at these events? 14 A Twenty-five years. 15 Q Have you ever sold counterfeit products before? 16 A I have not.</p>	<p>1 produce, answer questions and produce documents and things. You answered yes; isn't that correct? 2 A Correct. 3 Q Okay. So if you were aware of that, why did you throw out everything that said Lokai on it? 4 A So I didn't have to ship it to another show and I wasn't going to sell it anymore. 5 Q Knowing that you were going to be asked to produce things in this lawsuit? 6 A I didn't know that. 7 Q You just testified you were aware of how discovery worked in a lawsuit. And that you had been sued prior. 8 A A long time ago I was sued. 9 Q Did you forget in intervening time that you had to produce things in discovery? 10 A I had an attorney at that time so, yes, I did. 11 Q So your claim is that H-7, you've never seen this document? 12 A Correct. 13 Q There did come a time where you did finally have contact with -- as my firm was known at the time Bienstock and Michael; is that correct? 14 A I don't remember. 15 Q Well, maybe this will refresh your memory.</p>

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<p>1 Q Okay. Thank you. So in that statement you 2 are referring to these communications with Mr. Birnbaum 3 in April of 2016; correct? 4 A I do not remember. I'd have to go through 5 that and read that. I can't guess. 6 Q Were you telling the Court that you stopped 7 selling the Lokai bracelets after you were contacted by 8 Mr. Birnbaum in April of 2016? 9 A I don't remember. 10 Q Well, did you continue to sell Lokai bracelets 11 after Mr. Birnbaum contacted you in April of 2016? 12 A It's a broad question. 13 Q <u>It's not a broad question, sir. Did you or</u> 14 <u>did you not continue to sell bracelets with Lokai tags</u> 15 <u>on them after April 5th, 2016?</u> 16 A <u>Yes.</u> 17 Q But you said you hadn't sold that product for 18 three or four months to the Court. 19 A Once again, you are putting words into my 20 mouth and you are constraining what was said. I said 21 after – answer the question. Just state the question. 22 Q So you are saying when you were served you 23 hadn't sold that product for three or four months. Is 24 that what you meant when you said that to the Court? 25 A Correct.</p>	<p>1 objections. 2 Q Okay. So make your objection. You still have 3 to answer the question unless you are claiming 4 privilege. 5 A I'm going to claim harassment. 6 Q You can claim harassment all you want. Still 7 means you have to answer the question, sir, unless 8 there's privilege attached. 9 Are you married? 10 A I am not. 11 Q You are not married, so there goes spousal 12 privilege. You don't have an attorney. 13 A Harassment. 14 Q Have you spoken to a priest, or a rabbi or an 15 imam about this? 16 A Privilege. 17 Q Not – have you spoken to a religious figure 18 about this case? Yes or no. That's not a privilege 19 question. 20 A Yes, I have. 21 Q You have. Okay. Well, then I can't ask you 22 about those conversations. So I'm going to ask you 23 again, <u>did you display a Lokai banner at the Nevada</u> 24 <u>trade show, or the Nevada show that you were served the</u> 25 <u>Complaint of this lawsuit at?</u></p>
<p>1 Q But you were selling these bracelets at the 2 show you were served at. 3 A No, I was not. 4 Q You weren't? 5 A I was not. 6 Q You weren't selling Lokai? 7 A I was not. 8 Q You did didn't display a Lokai banner? 9 A How many questions are you going to ask me? 10 Q As many as I want, sir. 11 A Well, then ask them in a proper sense. And 12 get to the point. 13 MR. DAVIS: Can you re-read my last question? 14 A There was three questions. 15 Q Sir. 16 A Don't sir me. 17 Q I will sir you. 18 A Sir me all you want. 19 Q You are being disruptive, sir. I asked the 20 court reporter to read back the last question. 21 Who are you texting, sir? 22 A I am not texting anybody. 23 Q Are you going to review your Internet paper on 24 depositions or are you going to read something else? 25 A I'm going to review my Internet, my</p>	<p>1 A <u>Yes.</u> 2 Q But you weren't selling Lokai bracelets? 3 A I was not. 4 Q So you just hung this sign for product you 5 weren't selling? 6 A Correct. 7 Q There weren't bins marked with sizes of 8 bracelets with bracelets in them? 9 A I don't remember. 10 Q Did you have Lokai bracelets at that show? 11 A I don't remember. 12 Q Did you have a girl working with you at that 13 show? 14 A I don't remember. 15 Q You don't remember? I just need to show him 16 to refresh his memory. 17 (Discussion held off the record) 18 MR. DAVIS: All right. You know, this may 19 take a few minutes. Let's take a break. 20 THE VIDEOGRAPHER: The time is 11:29 a.m. 21 We're now off the record. 22 (Recess taken) 23 THE VIDEOGRAPHER: The time is 11:46 a.m. 24 We're now back on the record. 25 ////</p>

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1	BY MR. DAVIS:	1	tags on them?
2	Q Mr. Hueffner, you testified earlier that you	2	A The date I got served the papers.
3	discussed this matter with a religious figure; is that	3	Q Okay. That was the date that you stopped
4	correct?	4	selling them.
5	A Yes.	5	A Correct.
6	Q What were the dates that you had those	6	Q <u>So you continued to sell them after your</u>
7	discussions?	7	<u>April 5th, 2016, e-mail exchange with Mr. Birnbaum?</u>
8	A I don't remember.	8	A <u>Correct. I wasn't told I couldn't do that. I</u>
9	Q And who was this figure?	9	<u>compiled with everything that he said in his e-mail and</u>
10	A A priest.	10	<u>he didn't comply. --</u>
11	Q Okay. And where was this priest located?	11	Q There is not a question pending.
12	A Notre Dame.	12	Did you get permission from Lokai to use their
13	Q In Indiana?	13	<u>name on the banner or banners that you hung on your</u>
14	A Paris.	14	<u>booths?</u>
15	Q Did he speak English?	15	A No.
16	A Yes.	16	Q All right. Video, please. I'm going to show
17	Q When were you in Paris?	17	you a video to refresh your memory. If you remember I
18	A Three weeks ago.	18	asked you if there was a girl that was working with you
19	Q How did you get to Paris?	19	at the Nevada trade show. Do you still not remember if
20	A Flew.	20	that's a yes or no?
21	Q What were you doing in Paris?	21	A Correct.
22	A Sightseeing.	22	Q All right. Maybe this will refresh your
23	Q How did you pay for your plane ticket?	23	memory.
24	A I didn't.	24	MR. BIRNBAUM: Sound, if that helps. Turn the
25	Q How did you get the plane ticket?	25	sound on.
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1	A Gifted.	1	MR. DAVIS: Sorry.
2	Q Gifted from whom?	2	A That lady wasn't working for me.
3	A A friend.	3	Q She wasn't?
4	Q The friend's name?	4	A No.
5	A Not relevant to the case.	5	Q Who was she?
6	Q Your friend's name.	6	A I have no idea. Actually, I have an idea.
7	A Not relevant to the case.	7	That girl is the girlfriend of the boyfriend who is
8	Q That's not an objection that you get to place	8	taking the videotape.
9	on the record and not answer, sir. Your objection is	9	Q So she was not working for you?
10	noted. What's the name of the person who gave you this	10	A No.
11	plane ticket to Paris?	11	Q Okay. Did you give her any bracelets with the
12	A Harrah's Casino.	12	<u>Lokai tags on them throughout the course of that show?</u>
13	Q I'm sorry?	13	A Yes.
14	A Harrah's Casino.	14	Q How many?
15	Q So you're friends with a corporate entity?	15	A I don't remember.
16	A No, I had a free offer.	16	Q And you had a Lokai banner displayed at that
17	Q What was included in this offer?	17	show?
18	A A cruise and an airline ticket.	18	A I did.
19	Q How long were you in Paris?	19	Q But you testified that you weren't selling
20	A Seven days.	20	them?
21	Q How many conversations did you have with this	21	A Correct.
22	priest at Notre Dame?	22	Q Did you intend to sell them at that show?
23	A One.	23	A Yes.
24	Q All right. When did you stop selling the	24	Q Okay. But you didn't sell them because you
25	bracelets that you had in your possession with the Lokai	25	were actually told not to after you were served by the

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1	<u>organizers of the show; correct?</u>	1	person?
2	A <u>Correct.</u>	2	A Through Craig's List.
3	Q <u>So had you not been served and had the event</u>	3	Q Do you have the e-mails?
4	<u>organizers told you you couldn't sell them, you would</u>	4	A I do not.
5	<u>have sold them.</u>	5	Q What happened to them?
6	A <u>Correct.</u>	6	A Erased them. Text, some were texted.
7	Q <u>I think we're on nine; is that right? Have</u>	7	Q Who is your cell phone provider?
8	<u>this marked as H-9, please. I am going to hand you</u>	8	A Sprint.
9	<u>what's been marked as Exhibit H-9.</u>	9	Q How long have you been with Sprint with this
10	Did you have permission from Lokai to use --	10	number?
11	strike that.	11	A Twenty years.
12	<u>You just testified you did not have permission</u>	12	Q Would you prefer that you contacted Sprint for
13	<u>to use Lokai's name. Did you have permission to use</u>	13	your cell phone records or would you prefer if we did?
14	<u>their stylized logo?</u>	14	A Doesn't matter.
15	A <u>No.</u>	15	Q Isn't it true that you distributed two Lokai
16	Q <u>Did you have permission to use the water</u>	16	bracelets at the Nevada trade show?
17	<u>droplet logo?</u>	17	A I think I gave some for free, yeah.
18	A <u>No.</u>	18	Q So that's a yes, you distributed bracelets,
19	Q <u>Did you have permission to use the service</u>	19	Lokai bracelets, at the Nevada trade show?
20	<u>mark, Find your Balance?</u>	20	A I gave some away for free, yes.
21	A <u>No.</u>	21	Q Do you know the Craig's List person's name?
22	Q <u>All right. Look at the first page of H-9.</u>	22	A I do not.
23	Is this representative of the bracelets that	23	Q How much were you selling the Lokai bracelets
24	you were selling or that you had in your possession at	24	for?
25	the Nevada show?	25	A Sometimes I would sell them for \$10.
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1	A <u>I don't know.</u>	1	Sometimes I would give them away free on a prize wheel.
2	Q <u>So in the April 2016 e-mail exchange you had</u>	2	Sometimes I would sell them for 15, two for 25.
3	<u>with Mr. Birnbaum you said you only had the clear</u>	3	Q How much did you pay per bracelet for them?
4	<u>colored bracelets; is that correct?</u>	4	A Anywhere from, like, five to \$9, depending on
5	A <u>Correct.</u>	5	where I was at.
6	Q <u>But the bracelets, bracelets shown on H-9,</u>	6	Q You don't remember where you purchased them
7	<u>pages 3 and 4, are pink colored; correct?</u>	7	though?
8	A <u>Yes.</u>	8	A Cash and Carry events.
9	Q <u>Did you have other bracelets besides the clear</u>	9	Q Where?
10	<u>colored ones with the Lokai tag attached in your</u>	10	A Atlanta, Dallas, L.A., Seattle.
11	<u>possession at the Nevada show?</u>	11	Q And you made purchases --
12	A <u>Yes.</u>	12	A Denver.
13	Q <u>Did you have them at the Boston show?</u>	13	Q -- at all of those shows?
14	A <u>I don't remember.</u>	14	A I don't remember where I was at. I do so many
15	Q <u>Is it possible that you made a</u>	15	shows.
16	<u>misrepresentation to Mr. Birnbaum in that e-mail that</u>	16	Q How would you pay for them?
17	<u>you did have more than one color Lokai bracelet?</u>	17	A Cash.
18	A <u>I wasn't at that show the whole time, so I</u>	18	Q <u>Would you have gotten a receipt?</u>
19	<u>don't know what was there.</u>	19	A <u>No.</u>
20	Q <u>Was somebody else working with you in the</u>	20	Q <u>Do you give receipts?</u>
21	<u>Boston show?</u>	21	A <u>No.</u>
22	A <u>Yes.</u>	22	THE VIDEOGRAPHER: Could you take the
23	Q <u>Who?</u>	23	transmitter out of your pocket, it's making some
24	A <u>Someone from Craig's List.</u>	24	noise.
25	Q <u>Do you have -- how did you contact that</u>	25	MR. DAVIS: I'm sorry.

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<p>1 BY MR. DAVIS:</p> <p>2 Q Do you give receipts at shows?</p> <p>3 A <u>I do not.</u></p> <p>4 Q What payment methods do you accept at shows?</p> <p>5 A Cash.</p> <p>6 Q Do you accept credit cards?</p> <p>7 A PayPal sometimes.</p> <p>8 Q PayPal. Do you have PayPal records for any sales of Lokai bracelets?</p> <p>9 A I do not.</p> <p>10 Q Have you looked?</p> <p>11 A I do not.</p> <p>12 Q That's not my question, sir. Did you review your PayPal account to see if you have any--</p> <p>13 A I do not have any accounts that say Lokai on them.</p> <p>14 Q That's not what I asked you, sir. You just testified you occasionally accept PayPal as payment for goods you sell at shows; is that correct?</p> <p>15 A Yes.</p> <p>16 Q Did you ever accept PayPal for the bracelets that you sold that had a Lokai tag on them?</p> <p>17 A I did not.</p> <p>18 Q And how do you know that?</p> <p>19 A It's just a guess.</p>	<p>1 A Yes.</p> <p>2 Q So you were using the Absolute Marketing name at this show?</p> <p>3 A Correct.</p> <p>4 Q Have this marked as H-11.</p> <p>5 Let me show you what's been marked as H-11.</p> <p>6 You had that sign with you at the Reno show?</p> <p>7 A I don't remember.</p> <p>8 Q Did you have that sign in your possession at any point?</p> <p>9 A I don't remember. It's six months ago.</p> <p>10 Q Is that your handwriting?</p> <p>11 A Possibly. I can't guess.</p> <p>12 Q <u>Did you ever create a sign that had Lokai, \$15, or two for 25?</u></p> <p>13 A Yes.</p> <p>14 Q Okay. Is that it?</p> <p>15 A <u>I don't know.</u></p> <p>16 Q <u>If it was in the material at your booth at Reno can we assume it's yours?</u></p> <p>17 A Yes.</p> <p>18 I would like to strike my answer from the Boston show because I do remember I worked that one by myself.</p> <p>19 Q Okay. You don't get to strike any answers,</p>
<p>20 Q Okay. So you don't know that.</p> <p>21 A No.</p> <p>22 Q So it's possible you did?</p> <p>23 A Correct.</p> <p>24 Q Did you review your PayPal account in preparing your discovery responses in this case?</p> <p>25 A I did not.</p> <p>1 Q So your testimony is that you did not review your possible sales records in response to the discovery request that you received in this case.</p> <p>2 A I do not itemize what I sell. So I would have no receipts for any Lokai that were sold, or any cords that were sold or anything else I sold. I do not itemize receipts.</p> <p>3 Q But you did not review your PayPal account or produce any documents from it.</p> <p>4 A I did not.</p> <p>5 Q Okay. May I have this marked as H-10.</p> <p>6 Hand you what's been marked as H-10.</p> <p>7 (Document handed to witness)</p> <p>8 Q Are those the tables for your booth at the Reno event that you were served at?</p> <p>9 A I have no idea.</p> <p>10 Q It says Absolute Marketing on it; is that correct?</p>	<p>1 A I would like to redo my answer for that show from Boston that I worked it by myself. I would also like to state that I do many shows throughout the year and I don't remember who works for me or who doesn't work for me, but that show I remember I worked that one by myself and it was very slow.</p> <p>2 Q Okay. Have this marked as H-12.</p> <p>3 Do you still have any PayPal records during the time period which you sold bracelets with the Lokai tag on them?</p> <p>4 A No.</p> <p>5 Q Did you delete them from your PayPal account?</p> <p>6 A I just got a PayPal account.</p> <p>7 Q When?</p> <p>8 A Within the last 30 days.</p> <p>9 Q Did you ever have a PayPal account previous to that?</p> <p>10 A I did not.</p> <p>11 Q Ever?</p> <p>12 A I did not.</p> <p>13 Q Did you ever purchase anything on eBay?</p> <p>14 A No.</p> <p>15 Q Have you ever sold anything on eBay?</p> <p>16 A No.</p>

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<p>1 Q What e-mail address did you use to register 2 the PayPal account?</p> <p>3 A I can't guess.</p> <p>4 Q All right. I'm actually a little confused 5 now. Because a few minutes ago you testified that you 6 wouldn't be able to tell from the PayPal records if the 7 sale was for any Lokai bracelets; is that correct?</p> <p>8 A Correct.</p> <p>9 Q Because you don't itemize them?</p> <p>10 A Correct.</p> <p>11 Q But, and you also testified you stopped 12 selling Lokai bracelets after you were served in this 13 lawsuit.</p> <p>14 A Correct.</p> <p>15 Q Which was in May.</p> <p>16 A Correct.</p> <p>17 Q But then you testified that you've only had a 18 PayPal account for the last 30 days.</p> <p>19 A Correct.</p> <p>20 Q So --</p> <p>21 A Because you asked me what form of payment I've 22 taken.</p> <p>23 Q Okay. There is no question pending, sir.</p> <p>24 So are you still selling Lokai bracelets?</p> <p>25 A I am not. I testified I haven't sold them</p>	<p>1 2016?</p> <p>2 A I don't remember.</p> <p>3 Q Which is very different than the answer you 4 gave earlier when you said --</p> <p>5 A I'm confused. I don't remember.</p> <p>6 Q Okay. Did you ever have a PayPal account 7 previous to the one you currently have?</p> <p>8 A No.</p> <p>9 Q When did you -- do you remember the date you 10 started your current PayPal account?</p> <p>11 A I do not.</p> <p>12 Q Let's look at H-12. This is a shipping label 13 that you shipped something to the Reno-Sparks Convention 14 Center?</p> <p>15 A Correct.</p> <p>16 Q That would have most likely been product for 17 the show you were exhibiting at?</p> <p>18 A Correct.</p> <p>19 Q Does that refresh your memory earlier where 20 you said you were unsure how it arrived?</p> <p>21 A Yes.</p> <p>22 Q So you shipped it.</p> <p>23 A Correct.</p> <p>24 Q You didn't carry it on the plane.</p> <p>25 A I could have carried it also. I don't</p>
<p style="text-align: center;">Page 71</p> <p>1 since you served me the papers.</p> <p>2 Q So what I'm confused about then it wouldn't be 3 a problem with your PayPal receipts not saying, not 4 being itemized. Are you sure of that last 30 days date?</p> <p>5 A I would have to go to my records.</p> <p>6 Q So you are not sure.</p> <p>7 A I cannot guess. I would have to go to my 8 records.</p> <p>9 Q So you could have had a PayPal account prior 10 to May of 2016?</p> <p>11 A Possibly.</p> <p>12 Q Okay. Sir, this is why you need to answer 13 questions fully and truthfully because now you are 14 giving contradictory answers.</p> <p>15 A I don't know.</p> <p>16 Q Under oath.</p> <p>17 A I cannot guess.</p> <p>18 Q So where did the 30 days come from?</p> <p>19 A I remember getting an e-mail from PayPal, 20 trying to start a new PayPal account.</p> <p>21 Q Start a new PayPal account?</p> <p>22 A Start a PayPal account.</p> <p>23 Q So you had a previous PayPal account.</p> <p>24 A I have a PayPal account.</p> <p>25 Q Did you have a PayPal account prior to May</p>	<p style="text-align: center;">Page 73</p> <p>1 remember.</p> <p>2 Q It says it was shipped to the Reno-Sparks 3 Convention Center?</p> <p>4 A Correct.</p> <p>5 Q And who is it being shipped from?</p> <p>6 A My Gear International.</p> <p>7 Q Okay. What do you receive from My Gear 8 International?</p> <p>9 A Electronics.</p> <p>10 Q What kind of electronics?</p> <p>11 A Headphones, speakers, earbuds.</p> <p>12 Q What did I do with twelve? Have this marked 13 as H-13. Hand you what's been marked as H-13. It's a 14 picture of you; isn't that correct, sir?</p> <p>15 A Yes.</p> <p>16 Q What are you holding?</p> <p>17 A I can't tell.</p> <p>18 Q What products were you displaying at the Reno 19 show?</p> <p>20 A This booth isn't put up yet.</p> <p>21 Q Not asking what's in the picture. I am asking 22 you what you were selling at the Reno show or what did 23 you intend to sell at the Reno show?</p> <p>24 A The product I typically sell; electronics, 25 household gadgets, gift items.</p>

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<p>1 Q Okay. Can you be a little more specific than 2 that?</p> <p>3 A I don't know what your question is, broad 4 question.</p> <p>5 Q No, your answer is broad. What I'm asking is 6 to be a little more specific what items did you have 7 with you to sell at the Reno show.</p> <p>8 A My household regular products that I sell. My 9 gift products.</p> <p>10 Q Which are?</p> <p>11 A A vast array of products that I sell, 12 differently to every show.</p> <p>13 Q Give me an example.</p> <p>14 A Headphones, pillows, sheets.</p> <p>15 Q Anything else?</p> <p>16 A Cords.</p> <p>17 Q Charging cables?</p> <p>18 A Charging cables.</p> <p>19 Q Bracelets with Lokai tags on them?</p> <p>20 A Answer the question again. State the question 21 again.</p> <p>22 Q Did you have bracelets with Lokai tags on them 23 in Reno?</p> <p>24 A Yes.</p> <p>25 Q In the colors clear?</p>	<p>1 reporter so she can have them with the record.</p> <p>2 THE REPORTER: It's not an exhibit?</p> <p>3 MR. DAVIS: There are individual exhibits on 4 there.</p> <p>5 (Discussion held off the record)</p> <p>6 MR. DAVIS: I am going to show you Exhibit 7 Hueffner Video 1.</p> <p>8 (Video shown)</p> <p>9 BY MR. DAVIS:</p> <p>10 Q Is that you in the video?</p> <p>11 A Yes.</p> <p>12 Q Okay. Next to you are a series of clear 13 Tupperware like containers; is that correct?</p> <p>14 A Yes.</p> <p>15 Q What are in those containers?</p> <p>16 A Miscellaneous product that I sell.</p> <p>17 Q Miscellaneous product?</p> <p>18 A Yes.</p> <p>19 Q What are the labels?</p> <p>20 A I can't read them.</p> <p>21 Q That doesn't say S, that doesn't say M?</p> <p>22 A Yes.</p> <p>23 Q It does?</p> <p>24 A Yes.</p> <p>25 Q As in small, medium?</p>
<p>Page 75</p> <p>1 A I don't remember.</p> <p>2 Q Bluc?</p> <p>3 A I do not remember.</p> <p>4 Q Pink?</p> <p>5 A Asked and answered.</p> <p>6 Q I didn't ask you about pink.</p> <p>7 A I don't remember.</p> <p>8 Q Red?</p> <p>9 A I don't remember.</p> <p>10 Q You don't remember?</p> <p>11 A I don't remember.</p> <p>12 Q Does that picture refresh your memory at all?</p> <p>13 A Does not.</p> <p>14 Q How about Exhibit H-9? Does that refresh your 15 memory at all? H-9, sir. You need to look at it to 16 actually tell if it refreshes your memory.</p> <p>17 A What's the question?</p> <p>18 Q Does that refresh your memory what colors you 19 had in Reno?</p> <p>20 A No, it does not.</p> <p>21 Q I'm going to hand the court reporter and you, 22 so you have your copy as well. You can have copies of 23 all the exhibits when we're done.</p> <p>24 We are going to show Mr. Hueffner a series of 25 videos. We're going to give a thumb drive to the court</p>	<p>Page 77</p> <p>1 A Correct.</p> <p>2 Q And but you don't know what product's in 3 there?</p> <p>4 A All my containers have different product 5 inside there.</p> <p>6 Q Okay. Those aren't Lokai bracelets. Or what 7 you allege are Lokai bracelets.</p> <p>8 A Some of those are, yeah.</p> <p>9 Q Some are. There's other things in there?</p> <p>10 A Yes.</p> <p>11 Q And how do you know that?</p> <p>12 A Because I fill up that thing with stuff that 13 could break because silicon stops it from moving around.</p> <p>14 Q That's all I have on that video.</p> <p>15 I am going to show you exhibit video --</p> <p>16 Hueffner Video 2.</p> <p>17 (Video shown)</p> <p>18 Q What you have just taken out of the box, those 19 are the charging capabilities?</p> <p>20 A Yeah.</p> <p>21 Q All right. So let's go back to Exhibit H-5.</p> <p>22 Exhibit H-5, sir. Sir.</p> <p>23 So on the right-hand side of this picture 24 those are the same type of charging cables that you just 25 pulled out of the box in that video?</p>

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<p>1 A This is not in discovery so this can't be 2 used.</p> <p>3 Q Sir, answer the question. Are those the --</p> <p>4 A This is not in discovery. This cannot be 5 used.</p> <p>6 MR. BIRNBAUM: Shannon, do you think the judge 7 is in yet?</p> <p>8 MR. DAVIS: No, we still got, like, 45 9 minutes; right?</p> <p>10 MS. PIERCE: I can check, but I think we have 11 a little bit though.</p> <p>12 MR. DAVIS: Okay.</p> <p>13 BY MR. DAVIS:</p> <p>14 Q All right. We'll be talking about H-5 this 15 afternoon. Let me just see maybe --</p> <p>16 A I prefer not to go to lunch because they've 17 already taken two half-hour breaks for cigarettes and 18 I've been sitting here waiting to this to get over with 19 so I prefer not to go to lunch.</p> <p>20 Q Sir, I have you here for seven hours.</p> <p>21 A Correct.</p> <p>22 Q Okay.</p> <p>23 A I prefer you don't take a break to go for 24 cigarettes every half-hour.</p> <p>25 Q Sir, the reason why I take a break is</p>	<p>1 right-hand side of the picture that's Exhibit H-5.</p> <p>2 A Correct.</p> <p>3 Q And I am going to show you what's been marked 4 Hueffner Video 5. And what we're seeing in this video 5 is you setting up the Lokai banner; correct?</p> <p>6 A Correct.</p> <p>7 Q And it's about four feet wide, maybe less?</p> <p>8 A Way less.</p> <p>9 Q Okay. And it's a single banner that's less 10 than four feet wide.</p> <p>11 A Correct. We haven't talked about this on the 12 phone. Is this what -- did you watch those?</p> <p>13 Q I'm sorry?</p> <p>14 A Did you watch all these?</p> <p>15 Q Sir, you don't get to ask questions. Who is Angela Troop?</p> <p>16 A Another vendor.</p> <p>17 Q Who is Floyd Simmons?</p> <p>18 A No idea.</p> <p>19 Q You don't know an individual named -- the name 20 of Floyd Simmons?</p> <p>21 A I do not.</p> <p>22 Q Did you ever use the name Floyd Simmons?</p> <p>23 A I do not.</p> <p>24 Q Why is his Social Security Number attached to</p>
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<p>1 unimportant. We're taking a break for the court 2 reporter, for the videographer to change tapes and, 3 fine, we won't take lunch now, we'll wait. But we'll 4 take time to switch the tapes out.</p> <p>5 THE VIDEOGRAPHER: Time is 12:20 p.m. We're 6 now off the record.</p> <p>7 (Recess taken)</p> <p>8 THE VIDEOGRAPHER: The time is 12:26 p.m. 9 We're now back on the record.</p> <p>10 BY MR. DAVIS:</p> <p>11 Q I'm going to show the video that's marked as 12 Hueffner Video 3. Again, that's you in the video, sir?</p> <p>13 A Correct.</p> <p>14 Q And behind the displays that you are 15 assembling in the video is the banner that says Lokai on 16 it?</p> <p>17 A Correct.</p> <p>18 Q That's your banner?</p> <p>19 A Yes.</p> <p>20 Q I am going to show you what's been marked as 21 Hueffner Video 4. In front of you in that video, those 22 are the ten-foot charging cables you sell?</p> <p>23 A Some of them are.</p> <p>24 Q And, again, you are refusing to answer whether 25 or not those are the cables that are displayed on the</p>	<p>1 yours?</p> <p>2 A I have no idea.</p> <p>3 Q Do you have any bank accounts, sir?</p> <p>4 A No.</p> <p>5 Q None?</p> <p>6 A Zero.</p> <p>7 Q Did you ever have a bank account?</p> <p>8 A Yes.</p> <p>9 Q When was the last time you had a bank account?</p> <p>10 A 2009.</p> <p>11 Q And you haven't done any banking since then?</p> <p>12 A No. If someone has my name with my Social Security Number on there I would like to see that because someone is using my identity.</p> <p>13 Q This isn't an exhibit.</p> <p>14 A Well, if you are telling me on this deposition that someone is using my name with my Social Security Number, it's an issue.</p> <p>15 Q Do you have a driver's license, sir?</p> <p>16 A Yes.</p> <p>17 Q What state?</p> <p>18 A Wisconsin.</p> <p>19 Q What's the address on there?</p> <p>20 A 725 Sydney Drive.</p> <p>21 Q Do you own any property, sir?</p>

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<p>1 A All this stuff is pre-bankruptcy, so I'm not 2 sure what this has to do with this lawsuit. 3 Q I'm asking you, sir. 4 A I'm asking you what this has to do with this 5 lawsuit. 6 Q You can ask me all you want. I am not in 7 deposition here, you are. 8 A Well, I'm not going to answer anymore of these 9 questions due to the fact it has nothing to do with the 10 lawsuit. 11 Q It absolutely has something to do with this 12 lawsuit, sir. You made representations to this Court 13 that you have no money, that you're judgment proof. I'm 14 just trying to figure out whether that's true. 15 A Okay. Well, keep going because the list goes 16 on and on. 17 Q I know it does. 18 So Standard Express, LLC. 19 A Didn't pay a shipping bill. 20 Q Ramparts, Inc.? 21 A Didn't pay a casino marker. 22 Q For \$104,000. 23 A No, that's interest and -- interest and 24 penalties. 25 Q That was the judgment?</p>	<p>1 A Not know where I am, but I have an address. 2 Q The address you provided to the Court? 3 A Correct. 4 Q Is that where we send information there and 5 you claim you don't see it, same address? 6 A No. I see the information you send to the 725 7 Sydney address. 8 Q Didn't you just tell the Court a few weeks ago 9 that you didn't receive anything -- 10 A No, I did not. 11 Q -- when we sent it to that address? 12 A No, I didn't. 13 Q All right. So let me just recap. 14 You have no bank accounts? 15 A Correct. 16 Q You have no credit cards? 17 A Correct. 18 Q You have a PayPal account, but you don't have 19 a PayPal account? 20 A Correct. 21 Q You have no real property? 22 A Correct. 23 Q And this boat that you said you lived on you 24 rented for a week. 25 A Correct.</p>
<p style="text-align: center;">Page 95</p> <p>1 A Correct. 2 Q Cheryl, and I am going to spell the last name, 3 R-a-s-z-e-j-a. 4 A Same thing, a rebate. Didn't get their rebate 5 money, sued my company. 6 Q How about the town of Brookfield? What did 7 they sue you over? 8 A Town of Brookfield. Maybe speeding ticket. 9 Q They would sue you over a civil filing of a 10 speeding ticket? 11 A I don't remember. 12 Q How about the town of Summit? 13 A Probably real estate taxes. 14 Q How about Ray Hintz, Inc.? 15 A Didn't pay, didn't pay a trucking bill. 16 Q Helo Saunas, Inc.? 17 A Didn't pay for saunas. 18 Do you have the IRS in there for 1.8 million 19 in the state of Wisconsin for -- 20 Q You are very proud, Mr. Hueffner. 21 A I am. 22 Q I notice that. Is that why you don't live 23 anywhere? 24 A Correct. 25 Q Because the IRS might know where you were?</p>	<p style="text-align: center;">Page 97</p> <p>1 Q Why are you in Tampa? 2 A I was here for a trade show. 3 Q When was that show? 4 A It's over with. 5 Q What did you sell? 6 A Miscellaneous product. 7 Q That's not going to cut it. What did you 8 sell? 9 A Pillows and sheets. 10 Q And that's it? 11 A Yes. 12 Q No charger cables? 13 A No. 14 Q What was the name of the trade show? 15 A Tampa Junior League. 16 Q And all you sold were pillows and sheets? 17 A Correct. 18 Q Nothing else? 19 A Correct. I told you I haven't sold Lokai 20 since the day I got served. 21 Q Do you have any business associates? 22 A No. 23 Q No one that you work with, just people that 24 you said you find off eBay -- 25 A Correct.</p>

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<p>1 Q -- or Craig's List? 2 How do you pay them? 3 A Cash. 4 Q And how do you -- how do you -- do you issue 5 them a 1099 as an independent contractor -- 6 A Do not have to if it's under 600. 7 Q How do you, well, I may know the answer to 8 this. How do you file taxes for the business you do 9 with these trade shows if you don't keep records? 10 A I haven't filed taxes. 11 Q Since? 12 A 2009, 2007, actually. 13 Q You haven't filed federal income taxes since 14 2007. 15 A Correct. 16 Q When is this tax lien from with the IRS? 17 A 2006. 18 Q All right. So you have a tax lien in the 19 amount of \$1.5 million from back taxes dating to 2006. 20 And you have not filed a tax return since? 21 A Correct. 22 Q You testified that you've taken Uber to get 23 here; is that correct? 24 A Yes. 25 Q How did you register for Uber without a credit</p>	<p>1 And I am attending the deposition telephonically 2 from my office in Reno. I'm going to let the 3 counsel who are in the room in Tampa, Florida at 4 the deposition introduce themselves now. 5 JUDGE COOKE: Thank you. Go ahead, please. 6 MR. DAVIS: Good afternoon from Tampa, 7 Your Honor. Brent Davis and Shane Birnbaum from 8 Scarinci Hollenbeck for Plaintiffs. And 9 Mr. Hueffner is here -- and Mr. Hueffner is here 10 without counsel. 11 JUDGE COOKE: Okay. What's happening, 12 counsel? 13 MR. DAVIS: So, Your Honor, we're having an 14 issue that Mr. Hueffner is refusing to answer 15 questions about a photograph on the basis it wasn't 16 produced in discovery. It is not necessary to 17 produce this in discovery because it's being used 18 solely for impeachment. He answered the question 19 that he did not sell the counterfeit Lokais in a 20 trade show in Boston. This is a photo of his booth 21 in Boston. 22 JUDGE COOKE: Okay. Mr. Hueffner? 23 THE WITNESS: I'm not sure if that's a photo 24 of my booth in Boston. And I did not deny selling 25 Lokai bracelets. I denied selling counterfeit</p>
<p style="text-align: center;">Page 99</p> <p>1 card? 2 A I have a prepaid debit card from Walmart. 3 Q So <u>essentially</u> you keep no business records. 4 A <u>Correct</u>. 5 Q So there is no way for us to know how many 6 Lokai bracelets you sold. 7 A <u>Correct. I'm a gypsy and a vagabond.</u> 8 All right. Let's go off the record. 9 THE VIDEOGRAPHER: The time is 12:27 p.m. 10 We're now off the record. 11 (Recess taken) 12 MS. PIERCE: Are we on the record and ready? 13 THE VIDEOGRAPHER: Not yet. One moment, 14 please. 15 Time is 1:06 p.m. We are now back on the 16 record. 17 MS. PIERCE: All right. On the record. This 18 is Shannon Pierce. I'm going to place you guys on 19 hold while I call the Judge's chambers. She is 20 expecting our call. I will be back with you 21 momentarily. 22 JUDGE COOKE: Good morning, this is Judge 23 Cooke. 24 MS. PIERCE: Good morning, Your Honor. This 25 is Shannon Pierce on behalf of the Plaintiff Lokai.</p>	<p style="text-align: center;">Page 101</p> <p>1 Lokai bracelets. 2 JUDGE COOKE: Okay. Just a minute, please. I 3 have to get something. Pardon me for having you 4 wait. Okay. 5 Mr. Hueffner, we are going to talk about Rule 6 30 which is the rules about depositions. And, so 7 that you are clear, although the Plaintiff's 8 counsel may have explained this to you, you can, if 9 you wish to interpose an objection to a question, 10 you may do so. You may say what your objection is 11 and the basis for the objection. However, that is 12 as far as it goes unless you are asking the 13 question is invading attorney-client privilege or 14 something like that. In other words, you preserve 15 in the deposition your objection and explain what 16 it is, but the examination, the deposition, still 17 proceeds. 18 And so you can only refuse to answer to it for 19 privilege, a limitation, in other words, if I 20 ordered something earlier that said that subject 21 can't be covered. 22 So is that helpful to you, sir, understanding 23 that you can object to the question and state the 24 basis for the objection, as in a legal basis, but 25 you otherwise are required to answer. And if you</p>

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<p>1 go to the casino much anymore. So a lot of this stuff 2 is from the past play that I did ten or 15 years ago 3 trying to get me to come back.</p> <p>4 Q Throughout the course of this deposition 5 you've answered that you don't remember on multiple 6 occasions. Is there anything that could show you that 7 would jar your memory to remember any of these things 8 that you no longer can recall?</p> <p>9 A It's a broad question.</p> <p>10 Q You have placed an objection on the record, 11 now answer the question.</p> <p>12 A I don't know.</p> <p>13 Q Let's take a look at Exhibit H-5. Please 14 (indicating). This is your booth?</p> <p>15 A Correct.</p> <p>16 Q Okay. And there are these, on the right-hand 17 side those are the charging cords that we referred to 18 earlier?</p> <p>19 A Correct.</p> <p>20 Q <u>On the left-hand side there are two Lokai</u> <u>banners; correct?</u></p> <p>21 A <u>Correct.</u></p> <p>22 Q Earlier you testified that was one banner, but 23 that's not true, there's two of them; correct?</p> <p>24 A Correct.</p>	<p>1 Q So you may have sold -- 2 A No, I had put stuff on a pallet to ship to the 3 next show.</p> <p>4 Q So you had more than 22 bracelets?</p> <p>5 A At that -- from this picture there's more than 6 22.</p> <p>7 Q Okay. At the end of the show did you have 8 more than 22?</p> <p>9 A I did not.</p> <p>10 Q So you sold that many?</p> <p>11 A No.</p> <p>12 Q What happened to them?</p> <p>13 A He asked me to -- I told you they went on the 14 pallet to get shipped to another location.</p> <p>15 Q Okay. So they weren't in your physical 16 possession, but you still going to the next location had 17 more than 22 bracelets?</p> <p>18 A Correct.</p> <p>19 Q So you did, when you represented to 20 Mr. Birnbaum in April you had more than 22 bracelets.</p> <p>21 A I object to the question because that isn't 22 what was stated through our e-mails that we talked 23 about.</p> <p>24 Q Let's look at Exhibit H-8. Can you read, 25 well, let's take a look. So the top e-mail on page one</p>
<p style="text-align: center;">Page 115</p> <p>1 Q And in front of each of the banners is a 2 large, two large tubs; correct?</p> <p>3 A Correct.</p> <p>4 Q And they are filled with Lokai bracelets; 5 correct?</p> <p>6 A Uncorrect.</p> <p>7 Q What are they filled with?</p> <p>8 A Other product.</p> <p>9 Q Those aren't Lokai bracelets.</p> <p>10 A Those are Lokai bracelets, but there's filler 11 underneath.</p> <p>12 Q Are there more than 22?</p> <p>13 A Yes.</p> <p>14 Q So when you in April of 2016, when you were 15 contacted during that trade show or that show, whatever 16 kind of show it was, and you told Mr. Birnbaum that you 17 were not wasting your time and energy over 22 bracelets 18 that you have that was an incorrect statement.</p> <p>19 A No.</p> <p>20 Q Well, you just said there are more than 22 21 bracelets there.</p> <p>22 A I don't know what the time stamp on this 23 picture is. And when he called me the show had ended 24 and I had put stuff into the trailer, or truck and 25 trailer already.</p>	<p style="text-align: center;">Page 117</p> <p>1 of H-8, that e-mail is from you; correct?</p> <p>2 A Correct.</p> <p>3 Q To Mr. Birnbaum; correct?</p> <p>4 A Yes.</p> <p>5 Q On Tuesday, April 5th, 2016; correct?</p> <p>6 A Yes.</p> <p>7 Q That's when the Boston show that you had this 8 booth was at; correct?</p> <p>9 A At what time is that?</p> <p>10 Q 4:54 p.m.</p> <p>11 A Thank you.</p> <p>12 Q So that was the date of the Boston show; 13 correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. Please read the first sentence of your 16 e-mail.</p> <p>17 A I am not wasting my time and energy over the 18 22 bracelets that I have.</p> <p>19 Q Okay. So you represented that you only had 22 20 bracelets; is that true?</p> <p>21 A That is correct.</p> <p>22 Q But you're also saying that, no, you had more 23 than 22 bracelets.</p> <p>24 A Not at the show.</p> <p>25 Q So because they weren't physically next to</p>

30 (Pages 114 to 117)

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<p>1 you? So why did you say you only had 22?</p> <p>2 A Because that's all that I had there.</p> <p>3 Q Because you had already shipped an unknown</p> <p>4 number to the next show.</p> <p>5 A Correct.</p> <p>6 Q What was the next show?</p> <p>7 A I have no idea.</p> <p>8 Q <u>Did you sell them at the next show?</u></p> <p>9 A <u>I assume I did. Most likely.</u></p> <p>10 Q Because you were still selling them a month</p> <p>11 later --</p> <p>12 A Correct.</p> <p>13 Q -- in Nevada?</p> <p>14 A Correct.</p> <p>15 Q Even though you were told they were</p> <p>16 counterfeit.</p> <p>17 A I was not told they were counterfeit.</p> <p>18 Q At no point did Mr. Birnbaum -- we had a</p> <p>19 telephone conversation before these e-mails ensued;</p> <p>20 correct?</p> <p>21 A Yes.</p> <p>22 Q At no point Mr. Birnbaum didn't say that you</p> <p>23 were selling counterfeits.</p> <p>24 A He made the assumption and then I sent him the</p> <p>25 picture and he didn't say anything back which is right</p>	<p>1 were giving the banners away. I don't know who they</p> <p>2 were. Buy 25, here, take this free banner.</p> <p>3 Q Now let's talk about these new documents you</p> <p>4 sent us. Over the lunch break you e-mailed us two</p> <p>5 e-mails; correct?</p> <p>6 A Yes.</p> <p>7 Q They contained six picture?</p> <p>8 A Yes.</p> <p>9 Q Four of them were pictures that you previously</p> <p>10 produced; correct?</p> <p>11 A I guess. I don't remember.</p> <p>12 Q Turn to Exhibit H-1. This one (indicating).</p> <p>13 Eight or nine pages in.</p> <p>14 A I've got it.</p> <p>15 Q Those four pictures were among the six that</p> <p>16 you just sent us?</p> <p>17 A Correct.</p> <p>18 Q So you did produce those for us, these are</p> <p>19 nothing new?</p> <p>20 A No.</p> <p>21 Q Like we discussed earlier, you don't know who</p> <p>22 took these pictures, do you?</p> <p>23 A Yeah, I shot that picture.</p> <p>24 Q You did. Where?</p> <p>25 A In Aruba.</p>
Page 119	Page 121
<p>1 in the e-mail.</p> <p>2 Q Did you do any investigation into whether this</p> <p>3 product you had was legitimate or not?</p> <p>4 A He was going to tell me what the problem was,</p> <p>5 state it in the e-mail. Prove to me it's fake.</p> <p>6 Q Did you take any steps when you were told that</p> <p>7 these were not legitimate Lokais, did you take any</p> <p>8 action to confirm on your own whether they were or not.</p> <p>9 A How would I do that? I'm not -- I don't know</p> <p>10 about that stuff, so no.</p> <p>11 Q Okay. And you still don't remember where you</p> <p>12 got these Lokais posters from.</p> <p>13 A Correct.</p> <p>14 Q No recollection whatsoever.</p> <p>15 A Correct.</p> <p>16 Q Did you find them somewhere? Were they lying</p> <p>17 on the floor?</p> <p>18 A No, they were at a show.</p> <p>19 Q What show?</p> <p>20 A I don't remember.</p> <p>21 Q Someone gave them to you?</p> <p>22 A Yes.</p> <p>23 Q Who?</p> <p>24 A I didn't get the banner. I got the banner. I</p> <p>25 didn't get the banner stand. I got the banner. They</p>	<p>1 Q When were you in Aruba?</p> <p>2 A Last week.</p> <p>3 Q How did you get to Aruba?</p> <p>4 A Flew there.</p> <p>5 Q And how you did pay for your plane ticket?</p> <p>6 A Airline points.</p> <p>7 Q How do you generally pay for plane trip</p> <p>8 tickets?</p> <p>9 A Through my credit card, through my debit card</p> <p>10 or I normally --</p> <p>11 Q I'm sorry, which credit card would that be?</p> <p>12 A I have a debit card, which I already stated to</p> <p>13 you, that I go to Walmart, I'll put cash on it. If I</p> <p>14 need to book an airline ticket, I can book the airline</p> <p>15 ticket with my debit card.</p> <p>16 Q Which is not what you just said. You said</p> <p>17 with your credit card.</p> <p>18 A Debit card, credit card, check card. It's all</p> <p>19 the same.</p> <p>20 Q Do you have a check card?</p> <p>21 A No.</p> <p>22 Q What do you do with cash that you make at</p> <p>23 these shows?</p> <p>24 A Why is it relevant?</p> <p>25 Q So you've made your relevance objection, now</p>

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<p>1 answer the question.</p> <p>2 A Live my life.</p> <p>3 Q Do you carry it on you at all times?</p> <p>4 A Yes, it's not that much.</p> <p>5 Q Is Aruba in the United States?</p> <p>6 A No.</p> <p>7 Q Okay. So that would be not relevant to</p> <p>8 anything that goes on with U.S. trademark; is that</p> <p>9 correct?</p> <p>10 A I don't know what the trademark laws are.</p> <p>11 Q Let's keep going to now let's look at some of</p> <p>12 these other things. Let's go to the first, I'm assuming</p> <p>13 this is the screen shot. It's marked Sprint 1:43 p.m.</p> <p>14 I'm assuming this is a screen shot --</p> <p>15 A Correct.</p> <p>16 Q -- from your phone?</p> <p>17 A Yes.</p> <p>18 Q So you did not take these pictures?</p> <p>19 A No.</p> <p>20 Q You have no idea who is selling them through</p> <p>21 DHK.com?</p> <p>22 A I don't.</p> <p>23 Q How about the next one?</p> <p>24 A I do not.</p> <p>25 Q How about the next one?</p>	<p>1 A Those were off of the Peanut Festival website.</p> <p>2 Q And where is the Peanut Festival?</p> <p>3 A Dothan, Alabama.</p> <p>4 Q But you weren't at that festival?</p> <p>5 A No.</p> <p>6 Q Do you have any idea if that vendor is an</p> <p>7 authorized Lokai dealer?</p> <p>8 A I have no idea. That looks like it's a</p> <p>9 carnival.</p> <p>10 Q There is no question pending, sir.</p> <p>11 A All right. Let's go off the record.</p> <p>12 THE VIDEOGRAPHER: The time is 3:09 p.m. We</p> <p>13 are off the record.</p> <p>14 (Recess taken)</p> <p>15 THE VIDEOGRAPHER: The time 3:11 p.m. We are</p> <p>16 now back on the record.</p> <p>17 BY MR. DAVIS:</p> <p>18 Q Just a couple more questions, Mr. Hueffner.</p> <p>19 Q <u>So you testified earlier that you don't</u></p> <p>20 remember where you acquired the Lokai bracelets; is that</p> <p>21 correct?</p> <p>22 A Correct.</p> <p>23 Q <u>And you still don't remember?</u></p> <p>24 A Correct.</p> <p>25 Q <u>Okay. And you don't remember how many of</u></p>
<p style="text-align: center;">Page 123</p> <p>1 A I do not.</p> <p>2 Q How about the next one from Google? Do you</p> <p>3 have any personal knowledge about any of these eBay</p> <p>4 listings?</p> <p>5 A I do not.</p> <p>6 Q How about the next one?</p> <p>7 A I do not.</p> <p>8 Q How about the next one?</p> <p>9 A I do not.</p> <p>10 Q Continue with the next one.</p> <p>11 A I don't -- I don't have any knowledge of any</p> <p>12 of these companies.</p> <p>13 Q Okay. And is that true for the rest of the</p> <p>14 documents you produced?</p> <p>15 A Yes.</p> <p>16 Q Okay. And are we done? Is that now with the</p> <p>17 additional documents you sent us today, are those the --</p> <p>18 A Yes.</p> <p>19 Q Okay. So let's talk about these remaining two</p> <p>20 pictures. Did you take these pictures? And we don't</p> <p>21 have -- can't have a printout.</p> <p>22 A No, I did not.</p> <p>23 Q Okay. Do you know who took the pictures?</p> <p>24 A I do not.</p> <p>25 Q Where did they come from?</p>	<p style="text-align: center;">Page 125</p> <p>1 these Lokai tag bracelets you sold; is that correct?</p> <p>2 A Correct.</p> <p>3 Q <u>And is that still correct?</u></p> <p>4 A Correct.</p> <p>5 Q <u>And you don't remember how much money you</u></p> <p>6 <u>made?</u></p> <p>7 A Correct.</p> <p>8 Q <u>Still don't remember?</u></p> <p>9 A <u>I still don't remember.</u></p> <p>10 Q <u>And you don't remember where you disposed of</u></p> <p>11 <u>the bracelets?</u></p> <p>12 A In the Reno dumpster.</p> <p>13 Q <u>Is that a landmark or just a random dumpster</u></p> <p>14 <u>in Reno?</u></p> <p>15 A The Convention Center garbage.</p> <p>16 Q <u>And that's where you disposed of the signs as</u></p> <p>17 <u>well?</u></p> <p>18 A Correct.</p> <p>19 Q <u>But, and we've already established that was</u></p> <p>20 <u>after you were served with this lawsuit.</u></p> <p>21 A Correct.</p> <p>22 Q <u>And but you don't remember, or you didn't --</u></p> <p>23 <u>again, so you didn't give any thoughts to the fact that</u></p> <p>24 <u>those were relevant to the lawsuit as you got rid of</u></p> <p>25 <u>them.</u></p>

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<p>1 A I did not.</p> <p>2 Q I don't have anything further.</p> <p>3 THE VIDEOGRAPHER: The time is 3:13 p.m. We</p> <p>4 are now off the record.</p> <p>5 THE REPORTER: I'll send the original to?</p> <p>6 MR. DAVIS: That's a good question. So you</p> <p>7 have an option to --</p> <p>8 MR. BIRNBAUM: Should we have this on the</p> <p>9 record?</p> <p>10 MR. DAVIS: Yeah.</p> <p>11 (Discussion held off the record)</p> <p>12 MR. DAVIS: Sorry, on the record.</p> <p>13 You have a choice to receive a copy of the</p> <p>14 transcript, review it, make any corrections,</p> <p>15 misspellings, things like that, sign and return it</p> <p>16 to the court reporter, or you can waive the</p> <p>17 signature and bypass that option.</p> <p>18 If you want to receive the original, we need</p> <p>19 an address where you will receive it.</p> <p>20 And I believe, Shannon, what would be the time</p> <p>21 frame in Nevada?</p> <p>22 MS. PIERCE: Thirty days.</p> <p>23 MR. DAVIS: Thirty days you would have to</p> <p>24 return it in 30 days.</p> <p>25 THE WITNESS: That's fine. I'll look it over.</p>	<p>1 THE WITNESS: Ask you one question.</p> <p>2 MR. DAVIS: On the record or off?</p> <p>3 THE WITNESS: Off the record.</p> <p>4 MR. DAVIS: Let's wait until we're finished</p> <p>5 with on the record.</p> <p>6 THE WITNESS: Okay.</p> <p>7 (Discussion held off the record)</p> <p>8 THE REPORTER: Original exhibits to you?</p> <p>9 MR. DAVIS: Yes, that's fine. I will hold on</p> <p>10 to the original exhibits. Actually, you want me to</p> <p>11 just take them now?</p> <p>12 THE REPORTER: Sure.</p> <p>13 MR. DAVIS: I will take the exhibits with me.</p> <p>14 So send the original to the witness and I</p> <p>15 would like an e-tran.</p> <p>16 THE REPORTER: Okay. Thank you.</p> <p>17 (The deposition of CRAIG HUEFFNER</p> <p>18 concluded at 3:20 p.m. Reading and</p> <p>19 signing were not waived.)</p>
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<p>1 MR. DAVIS: Okay. Which address should we</p> <p>2 send it to?</p> <p>3 THE WITNESS: The same, 725 Sydney Drive,</p> <p>4 Racine, Wisconsin 53402.</p> <p>5 MR. DAVIS: Anything else you can think of</p> <p>6 housekeeping wise, Shannon?</p> <p>7 MS. PIERCE: No, I think we're good.</p> <p>8 MR. DAVIS: Okay.</p> <p>9 THE REPORTER: Shannon, did you need a copy of</p> <p>10 this?</p> <p>11 MS. PIERCE: Yes, a condensed.</p> <p>12 THE REPORTER: Thank you.</p> <p>13 MS. PIERCE: Why don't we also put on the</p> <p>14 record, just so there is no confusion,</p> <p>15 Mr. Hueffner, that you have now answered the</p> <p>16 questions about disclosures, that there is an</p> <p>17 obligation under the federal rules that if at any</p> <p>18 point your answers to those questions change,</p> <p>19 that's something you need to notify us about.</p> <p>20 Do you understand that?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MS. PIERCE: That's all I have. Thank you.</p> <p>23 THE REPORTER: Did you need a copy of the</p> <p>24 exhibits attached to your condensed?</p> <p>25 MS. PIERCE: I don't need the exhibits.</p>	<p>1 CERTIFICATE OF OATH</p> <p>2</p> <p>3 STATE OF FLORIDA }</p> <p>4 COUNTY OF SARASOTA }</p> <p>5 I, the undersigned authority, certify that</p> <p>6 CRAIG HUEFFNER personally appeared before me and was</p> <p>7 duly sworn on Tuesday, November 15, 2016.</p> <p>8 Witness my hand this 28th day of November,</p> <p>9 2016.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 Deborah J. Slinn, RPR, CSR</p> <p>Notary Public - State of Florida</p> <p>My Commission No. EE 193241</p> <p>Expires: April 26, 2020</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1

CERTIFICATE OF OATH

2

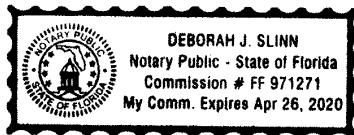
3 STATE OF FLORIDA }

4 COUNTY OF SARASOTA }

5 I, the undersigned authority, certify that
6 CRAIG HUEFFNER personally appeared before me and was
7 duly sworn on Tuesday, November 15, 2016.

8 Witness my hand this 28th day of November,
9 2016.

10



11

12

13

14

15

Deborah J. Slinn, RPR, CSR

Notary Public - State of Florida

My Commission No. EE 193241

Expires: April 26, 2020

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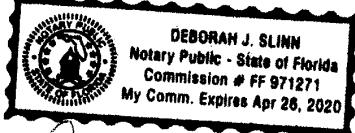
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1 DEPOSITION CERTIFICATE
2
3 STATE OF FLORIDA }
4 COUNTY OF CHARLOTTE }
5 I, DEBORAH J. SLINN, Registered Professional
6 Reporter, Certified Shorthand Reporter, and Notary
7 Public in and for the State of Florida at Large, do
8 hereby certify that I was authorized to and did
9 stenographically report the foregoing deposition of
10 CRAIG HUEFFNER, and that the transcript numbering pages
11 01 through 131 is a true record of the testimony
12 given by the witness.
13 I FURTHER CERTIFY that I am neither an
14 attorney nor counsel for the parties to this cause, nor
15 a relative or employee of any attorney or party
16 connected with this litigation, and that I have no
17 financial interest in the outcome of this action.
18 IN WITNESS WHEREOF, I have hereunto subscribed
19 my name and affixed my seal this 28th day of November,
20 2016, at Rotonda West, Charlotte County, Florida.
21 
22
23
24 Deborah J. Slinn, RPR, CSR, Notary Public
25 State of Florida at Large

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EXHIBIT E:

ABSOLUTE MARKETING DOCUMENTS

10/5/2016

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ABSOLUTE MARKETING

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Registration Number G14000033410
Status ACTIVE
Filed Date 04/03/2014
Expiration Date 12/31/2019
Current Owners 1
County MULTIPLE
Total Pages 1
Events Filed NONE
FEI/EIN Number NONE

Mailing Address

4942 INDIAN HILLS DRIVE
RACINE, WI 53406

Owner Information

HUEFFNER, CRAIG
4942 INDIAN HILLS DR
RACINE, WI 53406
FEI/EIN Number: NONE
Document Number: NONE

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APPLICATION FOR REGISTRATION OF FICTITIOUS NAME

REGISTRATION# G14000033410

Fictitious Name to be Registered: ABSOLUTE MARKETING

Mailing Address of Business: 4942 INDIAN HILLS DRIVE
RACINE, WI 53406

Florida County of Principal Place of Business: MULTIPLE

FEI Number:

FILED
Apr 03, 2014
Secretary of State

Owner(s) of Fictitious Name:

HUEFFNER, CRAIG
4942 INDIAN HILLS DR
RACINE, WI 53406

I the undersigned, being an owner in the above fictitious name, certify that the information indicated on this form is true and accurate. I further certify that the fictitious name to be registered has been advertised at least once in a newspaper as defined in Chapter 50, Florida Statutes, in the county where the principal place of business is located. I understand that the electronic signature below shall have the same legal effect as if made under oath and I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s. 817.155, Florida Statutes.

CRAIG HUEFFNER

04/03/2014

Electronic Signature(s)

Date

Certificate of Status Requested ()

Certified Copy Requested ()

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EXHIBIT F:
EXHIBITOR INFORMATION

5/24/2016

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Housing Help for Veterans of All Eras

CAVE

Contact Information

Absolute Marketing
4942 Indian Hills Drive Racine WI 53406 United States
866-592-1578 (p)

Floor Plan **Contacts**

Don't show me this message again

12:55 PM
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Absolute Marketing

Booth 3012

Address:

4942 Indian Hills Drive
Vendor
Racine, WI 53406

Phone:

419-349-0518

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Absolute Marketing

Booth 4145

Contact:

Craig Hueffner

Address:

 4942 Indian Hills Drive
 Racine, WI 53402

Phone:

414-349-0518

Email:
craig_hueffner@msn.com
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10/5/2016

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ABSOLUTE MARKETING

Racine, WI
United States
<http://www.tenfooter.com>

Booth: 1312

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10/5/2016

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EXHIBIT G:
DEFENDANT'S DISCOVERY RESPONSES

1 other further or different information is secured or available prior to the trial of the above
2 identified proceeding.

3 **INTERROGATORIES**

4 **Interrogatory No. 1**

5 Identify all products offered for sale and/or sold at any time by Defendant, or indirectly by
6 any Third Parties at Defendant's request, or which are otherwise in the possession,
7 custody and/or control of Defendant, which bear, embody or otherwise use the Lokai
8 Bracelet Intellectual Property.

9 *NON Available*

10 **Answer:**

11

12

13

14

15 **Interrogatory No. 2**

16 Identify the total number of all products identified in Interrogatory No. 1 that were sold at
17 any time by Defendant, or indirectly by any Third Parties at Defendant's request.

—

18 **Answer:**

19 *50-60*

20

21

22

23 **Interrogatory No. 3**

24 Identify the total number of all products identified in Interrogatory No. 1 that were
25 distributed by Defendant, or indirectly by any Third Parties at Defendant's request.

26 **Answer:**

27 *Sum 222*

1
2
3 Interrogatory No. 7

4 Identify the gross profit from all sales and/or distributions of all products identified in
5 Interrogatory No. 1 generated by Defendant, or indirectly by any Third Parties at
6 Defendant's request.

7 Answer:

8 *NOT Available*

9
10
11
12 Interrogatory No. 8

13 Identify all Documents and other materials, products or pieces, including, but not limited
14 to, posters, signs, billboards, advertisements, cards, brochures and other marketing
15 materials, used by Defendant, or which are otherwise in the possession, custody and/or
16 control of Defendant, which bear, embody or otherwise use the Class 35 Trademarks
17 and/or the Lokai Website Images.

18
19 Answer:

20
21 *Ø*

22
23
24 Interrogatory No. 9

25 Identify all events and locations where Defendant, or any Third Parties at Defendant's
26 request, at any time offered for sale and/or sold all products identified in Interrogatory N
27 1.

1 Answer:

2 *Don't Remember*
3
4
5

6 Interrogatory No. 10

7 Identify all events and locations where Defendant, or any Third Parties at Defendant's
8 request, at any time displayed, posted or otherwise used any Documents, and other
9 materials, products or pieces, including, but not limited to, posters, signs, billboards,
10 advertisements, cards, brochures and other marketing materials, which bear, embody or
11 otherwise use the Class 35 Trademarks and/or the Lokai Website Images.

12 Answer:

13 *Don't Remember*
14
15
16

17 Interrogatory No. 11

18 Identify all Persons who manufactured any products identified in Interrogatory No. 1.

19 Answer:

20 *Don't Know This Answer*
21
22
23

24 Interrogatory No. 12

25 Identify all Persons who supplied any products identified in Interrogatory No. 1 to
26 Defendant or any Third Parties at Defendant's request.

27 Answer:

28 *Cash + Carry Shows (Not Sure)*

1
2
3
4
Interrogatory No. 13

5 Identify all Persons who manufactured any Documents and other materials identified in
6
7 Interrogatory No. 8.

8 Answer:

9
10 *Dont Know*
11

12
Interrogatory No. 14

13 Identify all Persons who supplied any Documents and other materials identified in
14
15 Interrogatory No. 8 to Defendant or any Third Parties at Defendant's request.

16 Answer:

17
18 *Dont Know*
19

20
Interrogatory No. 15

21 Identify all Persons who purchased any products identified in Interrogatory No. 1 from
22
23 Defendant or any Third Parties at Defendant's request.

24 Answer:

25
26
27 *Dont Know*
28

~~For each of the foregoing interrogatories, identify each Person who supplied information and, in Defendant's response thereto and identify all files or categories of Documents and corresponding witness.~~

Ann Morgan

~~Received in the Clerk's office on the day of October, 2016.~~

/s/ Shannon S. Pierce
Fennemore Craig, P.C.
Ann Morgan, NV Bar No. 933
Shannon S. Pierce, NV Bar No. 12471
300 E. Second Street, Suite 1510
Reno, NV 89501
Telephone: (775) 788-2200
Facsimile: (775) 786-5000
Email: amorgan@fcclaw.com;
spierce@fcclaw.com

Counsel for Plaintiff Lokai Holdings LLC.

1 (d) the date on which the Document was created; and
2 (e) such other information sufficient to identify the Document or thing for
3 purposes of a subpoena *duces tecum*, including but not limited to, its
4 author, addressee, recipients and, where not apparent from the
5 identification alone, the relationship of such persons to each other.
6
7 7. Where a Document may be sensed or copied by a computing device, such as a
8 computer, text processor, word processor or any similar device, machine-readable copy shall be
9 produced, in a form which may be read and used by a similar computing device. Defendant shall
10 produce the contents of floppy disks, hard disks, optical disks, magnetic tapes, read-only
11 memories, computer networks, and other memory devices of all types.
12

13 **REQUESTS FOR PRODUCTION**

14 **REQUEST NO. 1:**

15 A physical sample of all products that were at any time offered for sale and/or sold by
16 Defendant, or indirectly by any Third Parties at Defendant's request, or which are
17 otherwise in the possession, custody and/or control of Defendant, which bear, embody or
18 otherwise use the Lokai Bracelet Intellectual Property.
19

20 *Non Available*

21 **REQUEST NO. 2:**

22 A physical sample of all Documents and other materials, products or pieces, including, but
23 not limited to, posters, signs, billboards, advertisements, cards, brochures and other
24 marketing materials, that were at any time used by Defendant, or which are otherwise in
25 the possession, custody and/or control of Defendant, which bear, embody or otherwise use
26 the Class 35 Trademarks and/or the Lokai Website Images.
27

Non Available

2
3 REQUEST NO. 3:

4 All Documents and things Relating To Defendant's, or any Third Parties' at Defendant's
5 request, purchase of any and all products identified in Request No. 1.

6 *Non Available*

7 REQUEST NO. 4:

8 All Documents and things Relating To Defendant's, or any Third Parties' at Defendant's
9 request, sale of any and all products identified in Request No. 1.

10 *Non Available*

11 REQUEST NO. 5:

12 All Documents and things Relating To Defendant's, or any Third Parties' at Defendant's
13 request, distribution of any and all products identified in Request No. 1.

14 *Non Available*

15 REQUEST NO. 6:

16 All Documents and things Relating To Defendant's, or any Third Parties' manufacture of
17 any and all products identified in Request No. 1.

18 *Non Available*

19 REQUEST NO. 7:

20 All Documents and things Relating To Defendant's, or any Third Parties' at Defendant's
21 request, purchase of any and all things identified in Request No. 2.

22 *Non Available*

23 REQUEST NO. 8:

24 All Documents and things Relating To Defendant's or any Third Parties' manufacture of
25 any and all things identified in Request No. 2.

26 *Non Available*

1
2 REQUEST NO. 9:

3 All Documents and things Relating To any Third Parties' supplying of any and all
4 products identified in Request No. 1 to Defendant's or any Third Parties at Defendant's
5 request.

6 Non Available

7 REQUEST NO. 10:

8 All Documents and things Relating To any Third Parties' supplying of any and all things
9 identified in Request No. 2 to Defendant's or any Third Parties at Defendant's request.

10 Non Available

11 REQUEST NO. 11:

12 All Documents and things Relating To any Persons who purchased the products identified
13 in Request No. 21 from Defendant or any Third Parties at Defendant's request.

14 Non Available

15 REQUEST NO. 12:

16 All Documents and things Relating To Defendant's, or any Third Parties' at Defendant's
17 request, revenue generated by the sale of any and all products identified in Request No. 1.

18 Non Available

19 REQUEST NO. 13:

20 All Documents and things that Defendant intends to use at the trial in this matter and/or
21 that are otherwise Relating to the claims that Plaintiff has asserted against Defendant in
22 this action.

23 Any and all EBAY or Amazon OR
24 Alibaba
25 Drilling from Websites

26 DATED this 14th day of October, 2016.

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EXHIBIT H:
CEASE AND DESIST
CORRESPONDENCE

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BIENSTOCK & MICHAEL, LLC
- COUNSELORS AT LAW -

RONALD S. BIENSTOCK**

JILL A. MICHAEL*

BRENT M. DAVIS*

IMRAAN FARUKHI*

IRA M. HOFFMAN**

ADRIAN LEE**

ARRIELLE S. MILLSTEIN**

OF COUNSEL:

TODD B. RUBENSTEIN*

*ADMITTED IN NY

**ADMITTED IN NJ

**ADMITTED IN WA

**ADMITTED IN CA

CONTINENTAL PLAZA
411 HACKENSACK AVENUE, 7th FLOOR
HACKENSACK, NEW JERSEY 07601-6329
TELEPHONE: (201) 525-0300
FACSIMILE: (201) 525-0133

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NEW YORK OFFICE;
1140 AVENUE OF THE AMERICAS, 9TH FLOOR
NEW YORK, NEW YORK 10036

TELEPHONE: (212) 247-0848
FACSIMILE: (212) 247-0910

REPLY TO NEW JERSEY OFFICE

WRITER'S DIRECT EMAIL:
RBBIENSTOCK@MUSICESQ.COM

August 11, 2015

VIA FIRST CLASS MAIL
& EMAIL (craig_hueffner@msn.com; ellen@absolute-advertising.com;
craig@absolute-advertising.com; mark.hannen@markhannendesigns.com)

Craig & Ellen Hueffner
Absolute Advertising
3214 W Plaza Drive
Franklin, WI 53132

**Re: Lokai Holdings, LLC / Absolute Advertising / Infringement of Intellectual
Property / Cease & Desist
[Our File No. 3702-006]**

Dear Gentlepersons:

Please be advised that we represent Lokai Holdings, LLC ("our Client") with respect to various intellectual property matters. As you may know, our Client manufactures and sells inspirational, boutique bracelets. This usage is supported by an extensive portfolio of registered trademarks, including, but not limited to: (1) the standard character "LOKAI" trademark (Reg. Nos. 4,429,129 and 4,637,357), (2) the stylized "LOKAI" trademark (Reg. No. 4,640,686), (3) the stylized Water Droplet logo (Reg. No. 4,636,915), and (4) the trade dress for the Lokai Bracelet (Reg. No. 4,472,655) (collectively "Lokai® Trademarks" or "Registered Trademarks"). Printouts depicting our Client's trademark registrations are enclosed as Exhibit A for your reference.

It has recently come to our Client's attention that Absolute Advertising ("you" or "your") is presently marketing, distributing, offering for sale and/or selling counterfeit Lokai® bracelets ("Infringing Goods").

Please be advised that you are not authorized to make use of the Lokai® Trademarks and the Infringing Goods are in violation of our Client's federal trademark rights. Any distribution, marketing,

BIENSTOCK & MICHAEL, LLC
- COUNSELORS AT LAW -

Absolute Advertising
Page 2

offering for sale and/or sale of the Infringing Goods will likely cause consumer confusion as to the true origin and/or sponsorship of the Infringing Goods, and trades on the goodwill of our Client. See 15 U.S.C. §1114(1). Accordingly, your conduct gives rise to a number of causes of legal action, including, without limitation, trademark infringement, unlawful false designation of origin, and unfair competition in violation of our Client's intellectual property rights. See 15 U.S.C. §1125(a).

In light of our Client's trademark rights in the Lokai® Trademarks, we demand that you **immediately cease and desist** from any present and future distribution, marketing, promotion, offering for sale, and/or sale of any and all products discussed above that would infringe on our Client's intellectual property rights. Moreover, we require that you **immediately** comply with the following demands:

- (1) Remove all postings of and references to the Infringing Goods on your website and/or any and all third party websites; and
- (2) Immediately provide us with (i) an accounting of all sales of Infringing Goods; (ii) send us any and all Infringing Goods in your possession; and (iii) contact information of supplier(s) of the Infringing Goods, including the supplier's name, address, telephone numbers and email addresses.

Your full compliance with the above demands and your good faith cooperation in preventing any further distribution of the Infringing Goods will help ensure that our Client does not pursue legal action against your company. We demand that you respond in writing to confirm such action has been taken within seven (7) days of the receipt of this letter, indicating your full compliance with our demands. If we do not receive such a satisfactory response from you or your representative by this deadline, our Client will be forced to take legal action to protect its rights, interests and claims with respect to this matter.

This correspondence does not constitute an admission or waiver of any rights. In addition, this letter is not an exhaustive recitation of the facts, law or circumstances. Therefore, our Client retains and reserves all defenses, claims, arguments and causes of action.

Very truly yours,

Ronald S. Bienstock

RSB/sb
Encl.

cc: Lokai Holdings, LLC (via email only)

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EXHIBIT A

United States of America
United States Patent and Trademark Office

LOKAI

Reg. No. 4,637,357

Registered Nov. 11, 2014

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

LOKAI HOLDINGS LLC (DEI AWARE LIMITED LIABILITY COMPANY)
12TH FLOOR
170 VARICK STREET
NEW YORK, NY 10013

FOR: RETAIL STORE SERVICES FEATURING JEWELRY, IN CLASS 35 (U.S. CLS. 100, 101
AND 102).

11RS1 USL 6-4-2013, IN COMMERCIAL 6-4-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 4,429,129

SLR. NO. 86-298,717, FILED 6-3-2014

JUSTIN SEVLERSON, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America
United States Patent and Trademark Office

LoKai

Reg. No. 4,429,129

LOKAI HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)

Registered Nov. 5, 2013

27 WEST 24TH ST
NEW YORK, NY 10010

Int. Cl.: 14

FOR: BRACELETS, JEWELRY, RUBBER OR SILICON WRISTBANDS IN THE NATURE OF
A BRACELET, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50)

TRADEMARK

FIRST USE 6-4-2013, IN COMMERCE 6-4-2013.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-170,908, FILED 11-6-2010

JAY FLOWERS, EXAMINING ATTORNEY



Kevin Howell Lee

Deputy Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office



Reg. No. 4,472,655

LOKAI HOLDINGS, LLC (DFI AWARE LIMITED LIABILITY COMPANY)
170 VARICK STREET

Registered Jan. 21, 2014

12TH FLOOR
NEW YORK, NY 10013

Corrected Sep. 23, 2014

FOR JEWELRY, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

Int. Cl.: 14

FIRST USE 12-24-2010, IN COMMERCE 12-24-2010.

TRADEMARK

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE BANKETS, APART FROM THE
MARK AS SHOWN.

SUPPLEMENTAL REGISTER

THE COLOR(S) BLACK AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE COLORS BLACK AND WHITE AS APPLIED TO DIAMETRALLY OPPOSED BEADS OR SPHERES CONTAINED IN THE GOODS. THE DOTTED LINES SHOW PLACEMENT OF THE MARK ON THE GOODS AND THE NUMBER AND SIZE OF THE DOTTED BEADS OR SPHERES DISPLAYED ARE NOT CLAIMED AS PART OF THE MARK.

SER. NO. 85-467,829, FILED P.R. 11-9-2011; AM. S.R. 10-31-2013.



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America
United States Patent and Trademark Office

lokai

Reg. No. 4,640,686

Registered Nov. 18, 2014

Int. Cl.: 14

TRADEMARK

PRINCIPAL REGISTER

LOKAI HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)

12TH FLOOR
170 VARICK STREET
NEW YORK, NY 10013

FOR: BRACELETS; JEWELRY, RUBBER OR SILICON WRISTBANDS IN THE NATURE OF
A BRACELET, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50)

FIRST USE 6-0-2013, IN COMMERCE 6-0-2013.

OWNER OF U.S. REG. NO. 4,429,129.

THE MARK CONSISTS OF THE WORD "LOKAI" WITH AN OPEN DOT ABOVE THE LETTER
"I" AND A SOLID DOT BELOW THE LETTER "I".

SER. NO. 86-244,019, FILED 4-7-2014

JUSTIN SEVERSON, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America
United States Patent and Trademark Office



Reg. No. 4,636,915

LOKAI HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)

Registered Nov. 11, 2014

12TH FLOOR
170 VARICK STREET
NEW YORK, NY 10013

Int. Cl.: 14

FOR, BRACELETS, JEWELRY, RUBBER OR SILICON WRISTBANDS IN THE NATURE OF
A BRACELET, IN CLASS 14 (U.S. CLS 2, 27, 28 AND 30).

TRADEMARK

FIRST USE 1-0-2014, IN COMMERCE 1-0-2014.

PRINCIPAL REGISTER

THE MARK CONSISTS OF TWO CONCENTRIC STYLIZED WATER DROPLETS CONTAIN-
ING TWO CIRCLES.

SER. NO. 86-244,023, FILED 4-7-2014.

JUSTIN SEVERSON, EXAMINING ATTORNEY



Michele K. Lee

Deputy Director of the United States
Patent and Trademark Office

Case 3:16-cv-00283-RCJ-VPC Document 34-8 Filed 01/20/17 Page 10 of 21

Shane I. Birnbaum

From: Shane Birnbaum
Sent: Tuesday, August 11, 2015 2:05 PM
To: 'craig_hueffner@msn.com'; 'ellen@absolute-advertising.com'; 'craig@absolute-advertising.com'; 'mark.hannen@markhannendesigns.com'
Cc: Ronald Bienstock
Subject: Lokai Holdings, LLC / Absolute Advertising / Infringement of Intellectual Property / Cease & Desist [Our File No. 3702-006]
Attachments: Cease & Desist_Absolute Advertising_2015.08.11.pdf

Tracking	Recipient	Delivery
Tracking	'craig_hueffner@msn.com' 'ellen@absolute-advertising.com' 'craig@absolute-advertising.com' 'mark.hannen@markhannendesigns.com'	
	Ronald Bienstock	Delivered: 8/11/2015 2:05 PM

Dear Gentlepersons:

On behalf of Ronald Bienstock, please see the attached correspondence regarding the above-referenced matter. A copy has been sent via first class mail.

Please direct any and all responses to Ronald Bienstock at rbienstock@musciesq.com. Thank you.

Best regards,

Shane Birnbaum

Shane Birnbaum, Law Clerk

Bienstock & Michael, LLC

NJ Office: Continental Plaza, 411 Hackensack Avenue, 7th Floor, Hackensack, NJ 07601

T: (201) 525-0300 Ext. 209 | F: (201) 525-0133

NY Office: 1140 Avenue of the Americas, 9th Floor, New York, NY 10036

T: (212) 247-0848 | F: (212) 247-0910

sbirnbaum@musciesq.com | <http://www.musciesq.com>

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Shane I. Birnbaum

From: Microsoft Outlook
To: craig_hueffner@msn.com; ellen@absolute-advertising.com; craig@absolute-advertising.com; mark.hannen@markhannendesigns.com
Sent: Tuesday, August 11, 2015 2:06 PM
Subject: Relayed: Lokai Holdings, LLC / Absolute Advertising / Infringement of Intellectual Property / Cease & Desist [Our File No. 3702-006]

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

craig_hueffner@msn.com (craig_hueffner@msn.com)

ellen@absolute-advertising.com (ellen@absolute-advertising.com)

craig@absolute-advertising.com (craig@absolute-advertising.com)

mark.hannen@markhannendesigns.com (mark.hannen@markhannendesigns.com)

Subject: Lokai Holdings, LLC / Absolute Advertising / Infringement of Intellectual Property / Cease & Desist [Our File No. 3702-006]